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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV05–981–1 FIR]

Almonds Grown in California; Revision to Requirements Regarding Credit for Promotion and Advertising

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 revising the requirements regarding credit for promotion and advertising activities under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule continues in effect the action that revised the requirements regarding the activities for which handlers may receive such credit. The changes expand the credit allowed for certain promotional activities, and help to clarify and simplify the regulations.

DATES: *Effective Date:* November 17, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; 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 Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, 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 an 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that revised the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. Under the order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule continues to revise the requirements regarding the activities for which handlers may receive such credit. The changes expand the credit allowed for certain promotional activities, and help to clarify and simplify the regulations. This action was unanimously recommended by the Board at a meeting on May 12, 2005.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 981.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441. The Board recommended the following changes to those regulations.

Increasing Credit for Internet Promotion Activities

Section 981.441(e)(4)(ii)(K) allows handlers to receive credit against their assessment obligation for the development and use of Web-site activities on the Internet for advertising and public relations purposes. Prior to implementation of the interim final rule, allowable credit was limited to $5,000 per year, and no credit was given for costs regarding E-commerce (which is equivalent to opening a store).

The Board recommended increasing the credit allowed for Internet promotional activities from $5,000 to $20,000 per year, adding credit for E-commerce (except for administration costs), and clarifying that no credit would be given to Intranet (inter-office

communication network). The Board determined that administration costs associated with E-commerce such as online payments and processing fees do not directly promote almonds and should thus be excluded from reimbursement under the program. This action expands the allowable credit and activities concerning Web sites and thus provides handlers more flexibility. Section 981.441(e)(4)(ii)(K) continues to be revised accordingly.

Clarification Regarding Final Reimbursement Claims

In order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Handlers must submit claims with appropriate documentation to the Board. Credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board within certain time frames throughout the crop year.

Section 981.441(e)(6)(iv) requires handlers to submit a statement of all outstanding credit-back commitments in full to the Board as of the close of the crop year (July 31) within 15 days after the crop year ends (August 15). Additionally, handlers must submit final claims pertaining to such outstanding commitments to the Board within 76 days after the crop year ends (October 15).

The Board recommended adding language to this section to clarify that final claims must be submitted ''with all required elements,'' which includes invoices, proof of payment, and similar documentation. This will allow Board staff to process the final claims for a crop year and complete the necessary accounting functions to close the books for that crop year in a timely manner. Other comparable deadlines throughout the credit-back regulations contain this language. This addition helps to facilitate program administration. Section 981.441(e)(6)(iv) continues to be revised accordingly.

Removal of Obsolete Language

Prior to implementation of the interim final rule § 981.441 contained language throughout the section that referred to the 1998–99 crop year only. The Board recommended removing this language to help clarify and simplify the regulation. Section 981.441 continues to be revised accordingly.

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 rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) 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.

Data for the 2003–04 crop year indicate that about 48 percent of the handlers shipped over $6,000,000 worth of almonds and about 52 percent of the handlers shipped under $6,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately $261,248. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule continues in effect the action that revised § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the order, handlers may receive credit towards their assessment expenditures for marketing promotion activities, including paid advertising. This rule continues to increase the credit allowed for Internet promotion activities from $5,000 to $20,000 per year, adds credit for E-commerce (excluding administration), and clarifies that final reimbursement claims submitted to the Board by handlers for a crop year must include all applicable documentation. This final rule continues to remove obsolete language from the regulations that was applicable to the 1998–99 crop year.

Regarding the impact of this rule on affected entities, it is estimated that, for the 2003–04 crop year, about 18 percent of the industry's handlers participated in the credit-back program administered under the order. Increasing the credit allowed for Internet promotion activities and adding credit for E-commerce provides additional opportunities for handlers. The changes to specify that handlers must submit final claims with all required elements help to facilitate program administration. Finally, removing obsolete language clarifies and simplifies the regulations.

Regarding alternatives, the Board formed a task force that met on January 26, March 1, and April 1, 2005, to review the credit-back regulations. The task force considered several changes to the regulations, including whether handlers should receive credit for travel to trade shows, sponsorships, and sweepstakes. The task force also reviewed a handbook that Board staff developed to facilitate administration of the credit-back regulations. The task force's recommendations were reviewed by the Board's Public Relations and Advertising Committee on May 11, 2005, and by the full Board on May 12, 2005. Ultimately, the Board decided that the changes discussed herein are warranted at this time.

This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget and assigned OMB. No. 0581–0178. 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all task force, committee and Board meetings, those meetings held on January 26, March 1, April 1, May 11, and May 12, 2005, were all public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons were 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 27, 2005. Copies of the rule were mailed or sent via facsimile by the Board's staff to all Board members, alternates and almond handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided a 30-day comment period which ended on August 26, 2005. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/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 information and recommendation submitted by the Board and other available information, it is hereby found that finalizing the interim rule, without change as published in the **Federal Register** (70 FR 36816 on June 27, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 70 FR 36816 on June 27, 2005, is adopted as a final rule without change.

Dated: October 13, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20859 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 430 and 431

RIN 1904–AB54

Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

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

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is publishing this technical amendment to place in the Code of Federal Regulations the energy conservation standards, and related definitions, that Congress prescribed in the Energy Policy Act of 2005 for certain consumer products and commercial and industrial equipment.

DATES: *Effective Date:* October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1851, e-mail: *linda.graves@ee.doe.gov*, or Thomas DePriest, Esq., U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Today's Action
III. Procedural Requirements
IV. Approval of the Office of the Secretary

I. Background

The Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109–58) was enacted on August 8, 2005. Among the provisions of Subtitle C of Title I of EPACT 2005 are provisions that amend Part B of Title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291–6309), which provides for an energy conservation program for consumer products other than automobiles, and Part C of Title III of EPCA (42 U.S.C. 6311–6317), which provides for a program, similar to the one in Part B, for certain commercial and industrial equipment. In addition to provisions directing DOE to undertake rulemakings to promulgate new or amended energy conservation standards for various consumer products and commercial and industrial equipment, Congress itself prescribed new efficiency standards and related definitions for certain consumer products and commercial and industrial equipment.

By today's action, DOE is placing in the Code of Federal Regulations (CFR), for the benefit of the public, the energy conservation standards and related definitions that Congress has prescribed for various consumer products and commercial and industrial equipment. In this technical amendment, DOE is not exercising any of the discretionary authority that Congress has provided in EPACT 2005 for the Secretary of Energy to revise, by rule, several of the product or equipment definitions and energy conservation standards.[1] DOE may exercise this discretionary authority at a later time in rulemakings to establish test procedures or efficiency standards for these products and equipment.

II. Summary of Today's Action

DOE is placing the new energy conservation standards and related definitions into 10 CFR part 430 (''Energy Conservation Program for Consumer Products'') or 10 CFR part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment''), as appropriate given the nature or type of the product or equipment. Apparently due to an error in legislative drafting, EPACT 2005 includes provisions dealing with the definitions, test procedures and standards for several types of commercial equipment in a section that amends sections 321, 323 and 325 of Part B of EPCA. Part B contains provisions for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' DOE anticipates that this error will be corrected through legislation, and that the provisions will become amendments to Part C of EPCA for ''Certain Industrial Equipment.'' Because the location of the provisions within the statute and the Code of Federal Regulations does not affect either their substance or applicable procedures, DOE is placing them in the appropriate CFR part based on their nature or type. DOE provides a ''cross-walk'' in Table 1 that shows the location of the standards for the products and equipment in EPACT 2005 and in the Code of Federal Regulations.

[1] See, for example, section 135(a)(2)(B) (the definition of ''medium base compact fluorescent lamp''); section 135(a)(3) (the definition of ''commercial prerinse spray valve''); and section 135(c)(4) (standards for medium base compact fluorescent lamps).

TABLE 1

Product/equipment type	EPACT 2005 section	CFR location
Fluorescent lamp ballasts	135(c)(2)	§ 430.32(m).
Ceiling fans and ceiling fan light kits	135(c)(4)	§ 430.32(s).
Illuminated exit signs	135(c)(4)	Part 431, Subpart L.
Torchieres	135(c)(4)	§ 430.32(t).
Low voltage dry-type distribution transformers	135(c)(4)	Part 431, Subpart K.
Traffic signal modules and pedestrian modules	135(c)(4)	Part 431, Subpart M.
Unit heaters	135(c)(4)	Part 431, Subpart N.
Medium base compact fluorescent lamps	135(c)(4)	§ 430.32(u).
Dehumidifiers	135(c)(4)	§ 430.32(v).
Commercial prerinse spray valves	135(c)(4)	Part 431, Subpart O.
Mercury vapor lamp ballasts	135(c)(4)	Part 431, Subpart P.
Commercial package air conditioning and heating equipment	136(b)	Part 431, Subpart F.
Commercial refrigerators, freezers, and refrigerator-freezers	136(c)	Part 431, Subpart C.
Automatic commercial ice makers	136(d)	Part 431, Subpart H.
Commercial clothes washers	136(e)	Part 431, Subpart I.

Where the statute establishes a prescriptive standard that either adopts or is based on voluntary standards of another entity, DOE has incorporated the relevant portion of the source document into the CFR text so that the CFR can be a fully self-contained regulation. This applies to the following: ANSI standards for fluorescent lamp ballasts; certain ENERGY STAR Program requirements or specifications for ceiling fans light kits, illuminated exit signs, traffic signal modules and pedestrian modules, and medium compact fluorescent lamps; and efficiency standards for low voltage dry-type distribution transformers that shall be the same as voluntary standards published by the National Electrical Manufacturers Association (NEMA TP–1–2002). Where terms are defined by another entity, DOE has included the definition in the CFR text, e.g., the terms ''AV'' and ''V'' as defined by the Association of Home Appliance Manufacturers.

In addition, DOE has made formatting changes needed to conform the new provisions to the existing text of Parts 430 and Part 431 of Title 10 of the Code of Federal Regulations. DOE has identified several places in EPACT 2005 where correction or clarification of statutory language appears to be warranted. For example, the definition of ''distribution transformer'' in section 135(a)(2)(B) of EPACT 2005 uses the term ''Uninterruptible Power System transformer'' instead of ''Uninterruptible Power Supply transformer;'' the term ''impedance transformer'' instead of ''special impedance transformer;'' and the term ''sealed and nonventilating transformer'' instead of ''sealed transformer, nonventilating transformer.'' Generally these are minor drafting problems that DOE anticipates will be rectified by Congress; if they are not, then DOE will issue any necessary interpretations in future rulemaking proceedings.

DOE notes that although Congress has prescribed energy conservation standards that will apply to products and equipment manufactured on or after the dates specified in EPACT 2005, manufacturers are not subject to DOE's compliance certification and enforcement programs until DOE promulgates the related test procedures for the new covered products and commercial equipment. While manufacturers are not subject to DOE certification and enforcement programs until DOE promulgates test procedures and related regulations, manufacturers must meet the standards as of the effective date of the standards. Manufacturers must, for example, be able to demonstrate that their products meet the energy conservation standards or energy design standards set by EPACT 2005. Furthermore, the Energy Policy and Conservation Act, as amended, defines the term ''manufacture'' as ''to manufacture, produce, assemble, or import'' (42 U.S.C. 6291(10)). Therefore, all consumer products and commercial and industrial equipment covered by this action must, on the date of manufacture, or in the case of imported products, as of the date of import, meet the standards set by EPACT 2005 and adopted in the Code of Federal Regulations by this action. Furthermore, the requirements in EPACT 2005 apply to the manufacture of covered consumer products and commercial and industrial equipment for sale in the 50 States as well as all U.S. territories.

The standards incorporated into the Code of Federal Regulations by today's action are briefly discussed as follows:

A. Fluorescent lamp ballasts. Section 135(c) of EPACT 2005 amends section 325(g) of EPCA to adopt energy conservation standards for fluorescent lamp ballasts manufactured on or after July 1, 2009, or sold on or after October 1, 2009, or incorporated into a luminaire manufactured on or after July 1, 2010. The standards apply to fluorescent lamp ballasts with input voltages of 120 or 277 volts and an input frequency of 60 Hertz for 4-foot and 8-foot F34T12, F96T12/ES or F96T12HO/ES fluorescent lamps. These standards are in addition to the standards for fluorescent lamp ballasts manufactured for F40T12, F96T12 or F96T12HO lamps already set out in section 10 CFR 430.32(m)(1)–(4). New paragraph 430.32(m)(5) adds standards for ballasts designed for all Energy Saver fluorescent lamps except for: (1) Replacement ballasts; (2) ballasts designed for dimming to 50 percent or less or the maximum power output of the ballast; (3) ballasts designed for use with two F96T12HO lamps at ambient temperatures of 20 °F or less and for use in an outdoor sign; or (4) ballasts that have a power factor of less than 0.90 and are designed and labeled for use only in residential applications. New paragraph 430.32(m)(6), makes the standards in paragraph 430.32(m)(5) applicable to all ballasts, including replacement ballasts, that are manufactured on or after July 1, 2010, or sold by a manufacturer on or after October 1, 2010. The test procedure for ballasts for Energy Saver fluorescent lamps is found in Appendix Q to Subpart B of Part 430 of the Code of Federal Regulations.

B. Ceiling fans and ceiling fan light kits. Section 135(c) of EPACT 2005 amends section 325 of EPCA to add subsections (v) and (ff) with respect to ceiling fans and ceiling fan light kits. New section 325(v) directs the Secretary to prescribe by rule, energy conservation standards for ceiling fans and ceiling fan

light kits not later than one year after the date of enactment of EPACT 2005, or by August 8, 2006, and new section 325(ff) establishes design standards for ceiling fans and ceiling fan light kits manufactured on or after January 1, 2007. DOE is incorporating the design standards set out in new section 325(ff) in today's rule. The design standards adopted today for ceiling fans require fan speed controls separate from any lighting controls, adjustable speed controls, and generally require the capability of reversible fan action. The design standards for ceiling fan light kits with medium screw based sockets require that they be packaged with screw-based lamps that meet the ENERGY STAR Program Requirements for Compact Fluorescent Lamps, version 3.0, or use other light sources that have at least equivalent lumens per watt performance. The standards for ceiling fan light kits with pin-based sockets require that they be packaged with fluorescent lamps that meet the ENERGY STAR Program Requirements for Residential Light Fixtures, version 4.0. For the benefit of the stakeholder looking for the energy conservation standards specified in EPACT 2005, DOE is incorporating into 10 CFR Part 430 the specific ENERGY STAR requirements adopted by EPACT 2005.

C. Illuminated exit signs. Section 135(c) of EPACT 2005 amends section 325 of EPCA to add subsection (w) setting energy conservation standards for illuminated exit signs. As discussed above, apparently due to an error in legislative drafting, EPACT 2005 inserted provisions for illuminated exit signs, a commercial product, into Part B of EPCA instead of into Part C of EPCA. DOE anticipates that this error will be corrected and as a result, is including the standards for illuminated exit signs in 10 CFR Part 431.

As of January 1, 2006, all illuminated exit signs must meet the ENERGY STAR Program Requirements for Illuminated Exit Signs, version 2.0, which requires an input power demand of 5 watts or less per face. DOE believes this will, in effect, require the use of Light Emitting Diodes (LEDs) in illuminated exit signs. Furthermore, for the benefit of stakeholders looking for the energy conservation standards specified in EPACT 2005, DOE is incorporating into 10 CFR part 431 the specific ENERGY STAR requirements adopted by EPACT 2005.

D. Torchieres. Section 135(c) of EPACT 2005 amends section 325 of EPCA to add subsection (x) setting standards for torchieres. Torchieres manufactured on or after January 1, 2006, shall consume not more than 190 watts of power, and shall not be capable of operating with lamps that total more than 190 watts.

E. Low voltage dry-type distribution transformers. Section 135(c) of EPACT 2005 amends section 325 of EPCA to add subsection (y) setting energy conservation standards for low voltage dry-type distribution transformers. As discussed above, apparently due to an error in legislative drafting, EPACT 2005 inserted provisions for low voltage dry-type distribution transformers, a commercial product, into Part B of EPCA instead of into Part C of EPCA. DOE anticipates that this error will be corrected and as a result, is including the standards for low voltage dry-type distribution transformers in 10 CFR Part 431.

EPACT 2005 requires that low voltage dry-type distribution transformers manufactured on or after January 1, 2007, shall meet the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of National Electrical Manufacturers Association (NEMA) TP–1–2002, ''Guide for Determining Energy Efficiency for Distribution Transformers.'' For the benefit of stakeholders looking for the standards specified in EPACT 2005, and after consulting NEMA (who does not object), DOE is codifying the efficiency levels specified in Table 4.2 of NEMA TP–1–2002 in the Code of Federal Regulations.

F. Traffic signal modules and pedestrian modules. Section 135(c) of EPACT 2005 amends section 325 of EPCA to add subsection (z), setting energy conservation standards for traffic signal modules and pedestrian modules. As discussed above, apparently due to an error in legislative drafting, EPACT 2005 inserted provisions for traffic signal modules and pedestrian modules, commercial products, into Part B of EPCA instead of into Part C of EPCA. DOE anticipates that this error will be corrected and as a result, is including the standards for traffic signal modules and pedestrian modules in 10 CFR Part 431.

As of January 1, 2006, all illuminated exit signs must meet the ENERGY STAR Program Requirements for traffic signals, as in effect on the date of enactment of EPACT 2005, August 8, 2005, and shall be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems. The ENERGY STAR program for traffic signals is based on a low energy requirement and conformance to the Institute for Transportation Engineers (ITE) ''Interim LED Purchase Specification, Vehicle Traffic Control Signal Heads, Part 2: Light Emitting Diode (LED) Vehicle Traffic Signal Modules'' (VTCSH Part 2). For the benefit of stakeholders looking for the energy conservation standards specified in EPACT 2005, DOE is incorporating into 10 CFR Part 431 the specific ENERGY STAR requirements adopted by EPACT 2005.

G. Unit heaters. Section 135(c) of EPACT 2005 amends section 325 of the EPCA to add subsection (aa) setting energy conservation standards for unit heaters. As discussed above, apparently due to an error in legislative drafting, EPACT 2005 inserted provisions for unit heaters, a commercial product, into Part B of EPCA instead of into Part C of EPCA. DOE anticipates that this error will be corrected and as a result, is including the standards for unit heaters in 10 CFR Part 431.

EPACT 2005 requires that unit heaters manufactured on or after August 8, 2008, be equipped with an intermittent ignition device; and have power venting or an automatic flue damper.

H. Medium base compact fluorescent lamps. Section 135(c) of EPACT 2005 amends section 325 of the EPCA to add subsection (bb) setting energy conservation standards for medium base compact fluorescent lamps. A bare lamp and covered lamp (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, shall meet minimum initial efficacy, lumen maintenance at 1000 hours, lumen maintenance at 40 percent of rated life, rapid cycle stress test and lamp life requirements prescribed by the August 9, 2001, version of the ENERGY STAR Program Requirements for Compact Fluorescent Lamps. For the benefit of stakeholders, DOE is incorporating into 10 CFR part 430 the specific ENERGY STAR requirements adopted by EPACT 2005.

I. Dehumidifiers. Section 135(c) of EPACT 2005 amends section 325 of the EPCA to add subsection (cc) setting energy conservation standards for dehumidifiers. Dehumidifiers manufactured on or after October 1, 2007, shall meet minimum energy factor levels specified in EPACT 2005, depending on their capacity (pints/day).

J. Commercial prerinse spray valves. Section 135(c) amends section 325 of EPCA to add subsection (dd) setting water conservation standards for commercial prerinse spray valves. As discussed above, apparently due to an error in legislative drafting, EPACT 2005 inserted provisions for commercial prerinse spray valves, a commercial product, into Part B of EPCA instead of into Part C of EPCA. DOE anticipates that this error will be corrected and, as

a result, is including the water conservation standards for commercial prerinse spray valves in 10 CFR Part 431. Commercial prerinse spray valves manufactured on or after January 1, 2006, shall have a flow rate of not more than 1.6 gallons per minute.

K. Mercury vapor lamp ballasts. Section 135(c) amends section 325 of EPCA to add subsection (ee) prohibiting the manufacture or importation of mercury vapor lamp ballasts. As discussed above, apparently due to an error in legislative drafting, EPACT 2005 inserted provisions for mercury vapor lamp ballasts, a commercial product, into Part B of EPCA instead of into Part C of EPCA. DOE anticipates that this error will be corrected and as a result, is including the standards for mercury vapor lamp ballasts in 10 CFR Part 431. EPACT 2005 requires that mercury vapor lamp ballasts shall not be manufactured or imported after January 1, 2008. With regard to imported ballasts, the standard applies to both the importing of ballasts as well as the importing of mercury vapor lamp luminaires with ballasts, since importing a mercury vapor lamp luminaire with a mercury vapor lamp ballast would be the same as importing a mercury vapor lamp ballast. Therefore, as of January 1, 2008, luminaires cannot be imported with mercury vapor lamp ballasts.

L. Commercial package air-conditioning and heating equipment. Section 136(b) of EPACT 2005 amends section 342(a) of EPCA to add subsections (7)–(9) setting energy conservation standards for commercial package air-conditioning and heating equipment. Commercial package air-conditioning and heating equipment manufactured on or after January 1, 2010, shall meet specific minimum energy efficiency levels, depending on category, product capacity (Btu per hour) and the type of heating the equipment has, if any. DOE had begun a rulemaking to set standards for small commercial package air-conditioning and heating equipment (greater than or equal to 65,000 Btu per hour cooling capacity and less than 135,000 Btu per hour cooling capacity) and large commercial package air-conditioning and heating equipment (greater than or equal to 135,000 Btu per hour cooling capacity and less than 240,000 Btu per hour cooling capacity), in accordance with section 342(a)(6)(A) of EPCA, and published an advance notice of proposed rulemaking in the **Federal Register** on July 29, 2005. 68 FR 45460. As a result of EPACT 2005, the rulemaking is moot, and DOE has terminated the rulemaking for small and large commercial package air conditioning and heating equipment.

M. Commercial refrigerators, freezers, and refrigerator-freezers. Section 136(c) of EPACT 2005 amends section 342 of EPCA to add paragraph (c), setting energy conservation standards for commercial refrigerators, freezers and refrigerator-freezers. Commercial refrigerators, freezers and refrigerator-freezers with doors and a self-contained condensing unit manufactured on or after January 1, 2010, shall meet specific maximum allowable daily energy use levels, depending on temperature applications, holding or pull-down applications , door type, and product capacity (cubic feet).

N. Automatic commercial ice makers. Section 136(d) of EPACT 2005 amends section 342 of EPCA to add paragraph (d), setting energy conservation standards for automatic commercial ice makers that produce between 50 and 2500 pounds of cube type ice per 24-hour period. Automatic commercial ice makers manufactured on or after January 1, 2010, shall meet specific maximum allowable energy use levels and maximum allowable condenser water use levels, depending on equipment type, cooling type (water or air), and harvest rate (pounds of ice per 24 hour period).

O. Commercial clothes washers. Section 136(e) of EPACT 2005 amends section 342 of EPCA to add paragraph (e), setting energy conservation and water conservation standards for commercial clothes washers. The standards for commercial clothes washers are a modified energy factor of at least 1.26 and a water factor of not more than 9.5. As discussed above, EPACT 2005 includes energy conservation standards for commercial clothes washers, based on the test procedures for residential clothes washers found at Appendix J1 to Subpart B of 10 CFR Part 430. EPACT 2005 also adds a water factor requirement for commercial clothes washers which is not found in 10 CFR Part 430 for residential clothes washers. However, the DOE test procedure found at Appendix J1 to Subpart B of Part 430 includes a measurement of water consumption, i.e., water consumption factor. Therefore, for the benefit of stakeholders looking for the energy conservation standards specified in EPACT 2005, DOE is incorporating the modified energy factor and water factor requirements adopted by EPACT 2005 into section 431.156 of 10 CFR Part 431.

III. Procedural Requirements

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's final rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*. DOE today is revising the Code of Federal Regulations to incorporate, without substantive change, energy conservation standards prescribed by Congress in the Energy Policy Act of 2005. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply to this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or recordkeeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental

assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov.* This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the

action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on October 5, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, DOE hereby amends Chapter II, Subchapter D, of title 10 of the Code of Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:
■ a. Adding in alphabetical order definitions of ''ceiling fan,'' ''ceiling fan light kit,'' ''dehumidifier,'' ''medium screw base,'' ''replacement ballast,'' and ''torchiere''.
■ b. Revising the definition of ''medium base compact fluorescent lamp''.

The revision and additions read as follows:

§ 430.2 Definitions.

* * * * *

Ceiling fan means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.

Ceiling fan light kit means equipment designed to provide light from a ceiling fan that can be—

(1) Integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or

(2) Attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan.

* * * * *

Dehumidifier means a self-contained, electrically operated, and mechanically encased assembly consisting of—

(1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere;

(2) A refrigerating system, including an electric motor;

(3) An air-circulating fan; and

(4) Means for collecting or disposing of the condensate.

* * * * *

Medium base compact fluorescent lamp means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp; however, the term does not include—

(1) Any lamp that is—

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of ''General Service Incandescent Lamp'' in this section; or

(2) Any lamp not described in the definition of ''General Service Incandescent Lamp'' in this section that is excluded by the Secretary, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

Medium screw base means an Edison screw base identified with the prefix E–26 in the ''American National Standard for Electric Lamp Bases'', ANSI_IEC C81.61–2003, published by the American National Standards Institute.

* * * * *

Replacement ballast means a ballast that—

(1) Is designed for use to replace an existing fluorescent lamp ballast in a previously installed luminaire;

(2) Is marked ''FOR REPLACEMENT USE ONLY'';

(3) Is shipped by the manufacturer in packages containing not more than 10 fluorescent lamp ballasts; and

(4) Has output leads that when fully extended are a total length that is less than the length of the lamp with which the ballast is intended to be operated.

* * * * *

Torchiere means a portable electric lamp with a reflector bowl that directs light upward to give indirect illumination.

* * * * *

■ 3. Appendix Q to subpart B of Part 430 is amended by:
■ a. Amending the definition of ''F40T12 lamp'' by revising the term ''C78.1–1978(R1984)'' to read ''C78.81–2003 (Data Sheet 7881–ANSI–1010–1)'';
■ b. Amending the definition of ''F96T12 lamp'' by revising the term ''C78.1–1978(R1984)'' to read ''C78.81–2003 (Data Sheet 7881–ANSI–3007–1)'';
■ c. Revising the definition of ''F96T12HO lamp''.
■ d. Redesignating sections 1.6 thru 1.13 as 1.9 thru 1.16.
■ e. Adding definitions of ''F34T12 lamp,'' ''F96T12/ES lamp,'' and ''F96T12HO/ES lamp''.

The revision and additions read as follows:

Appendix Q to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

1. Definitions

* * * * *

1.5 F96T12HO lamp means a nominal 110 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1019–1).

1.6 F34T12 lamp (also known as a ''F40T12/ES lamp'') means a nominal 34 watt tubular fluorescent lamp that is 48 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1006–1).

1.7 F96T12/ES lamp means a nominal 60 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–3006–1).

1.8 F96T12HO/ES lamp means a nominal 95 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1017–1).

* * * * *

■ 4. Section 430.32 of subpart C is amended by:
■ a. Revising the introductory sentence of paragraph (m)(1).
■ b. Adding new paragraphs (m)(5), (m)(6) and (m)(7).
■ c. Adding new paragraphs (s), (t), (u) and (v).

The revisions and additions read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(m)(1) *Fluorescent lamp ballasts.* Except as provided in paragraphs (m)(2), (m)(3), (m)(4), (m)(5), (m)(6) and (m)(7) of this section, each fluorescent lamp ballast—

* * * * *

(5) Except as provided in paragraph (m)(7) of this section, each fluorescent lamp ballast (other than replacement ballasts defined in § 430.2)—

(i)(A) Manufactured on or after July 1, 2009;

(B) Sold by the manufacturer on or after October 1, 2009; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after July 1, 2010; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with F34T12 lamps, F96T12/ES lamps, or F96T12HO/ES lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor of not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F34T12 lamp	120/277	34	2.61
Two F34T12 lamps	120/277	68	1.35
Two F96T12/ES lamps	120/277	120	0.77
Two F96T12HO/ES lamps	120/277	190	0.42

(6) The standards in paragraph (m)(5) shall apply to all ballasts covered by paragraph (m)(5)(ii), including replacement ballasts and ballasts described in paragraph (m)(7) of this section, that are manufactured on or after July 1, 2010, or sold by the manufacturer on or after October 1, 2010.

(7) The standards in paragraph (m)(5) do not apply to—

(i) A ballast that is designed for dimming to 50 percent or less of the maximum output of the ballast;

(ii) A ballast that is designed for use with 2 F96T12HO lamps at ambient temperatures of 20 degrees F or less and for use in an outdoor sign; or

(iii) A ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential applications.

* * * * *

(s) *Ceiling fans and ceiling fan light kits.*

(1) All ceiling fans manufactured on or after January 1, 2007, shall have the following features:

(i) Fan speed controls separate from any lighting controls;

(ii) Adjustable speed controls (either more than 1 speed or variable speed);

(iii) The capability of reversible fan action, except for—

(A) Fans sold for industrial applications;

(B) Outdoor applications; and

(C) Cases in which safety standards would be violated by the use of the reversible mode.

(2)(i) Ceiling fan light kits with medium screw base sockets manufactured on or after January 1, 2007, shall be packaged with screw-based lamps to fill all screw base sockets.

(ii) The screw-based lamps required under paragraph (2)(i) of this section shall—

(A) Meet the ENERGY STAR Program requirements for Compact Fluorescent Lamps, version 3; or

(B) Use light sources other than compact fluorescent lamps that have lumens per watt performance at least equivalent to comparable configured compact fluorescent lamps meeting the energy conservation standards described in paragraph (2)(ii)(A) of this section.

(3) Ceiling fan light kits with pin-based sockets for fluorescent lamps manufactured on or after January 1, 2007 shall—

(i) Meet the ENERGY STAR Program Requirements for Residential Light Fixtures version 4.0 issued by the Environmental Protection Agency; and

(ii) Be packaged with lamps to fill all sockets.

(t) *Torchieres.* A torchiere manufactured on or after January 1, 2006 shall:

(1) Consume not more than 190 watts of power; and

(2) Not be capable of operating with lamps that total more than 190 watts.

(u) *Medium Base Compact Fluorescent Lamps.* A bare lamp and covered lamp (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, shall meet the following requirements:

Factor	Requirements
Lamp Power (Watts) & Configuration[1]	Minimum Efficiency: lumen/watt (Based upon initial lumen data).[2]
Base Lamp:	
Lamp Power <15	45.0.
Lamp Power ≥15	60.0.
Covered Lamp (no reflector):	
Lamp Power <15	40.0.
15≤ Lamp Power <19	48.0.
19≤ Lamp Power <25	50.0.
Lamp Power ≥25	55.0.
Covered Lamp (with reflector):	
Lamp Power <20	33.0.
Lamp Power >20	40.0.
1,000-hour Lumen Maintenance	The average of at least 5 lamps must be a minimum 90.0% of initial (100-hour) lumen output @ 1,000 hours of rated life.
Lumen Maintenance	80.0% of initial (100-hour) rating at 40 percent of rated life (per ANSI C78.5 Clause 4.10).
Rapid Cycle Stress Test	Per ANSI C78.5 and IESNA LM–65 (clauses 2,3,5, and 6). *Exception:* Cycle times must be 5 minutes on, 5 minutes off. Lamp will be cycled once for every two hours of rated life. At least 5 lamps *must meet or exceed* the minimum number of cycles.

Factor	Requirements
Average Rated Lamp Life	≥6,000 hours as declared by the manufacturer on packaging and qualification form. At 80% of rated life, statistical methods may be used to confirm lifetime claims based on sampling performance.

[1] Take performance and electrical requirements at the end of the 100-hour aging period according to ANSI Standard C78.5. The lamp efficacy shall be the average of the lesser of the lumens per watt measured in the base up an/or other specified positions. Use wattages place on packaging to select proper specification efficacy in this table, not measured wattage. Labeled wattages are for reference only.

[2] Efficacies are based on measured values for lumens and wattages from pertinent test data. Wattages and lumens placed on packages may not be used in calculation and are not governed by this specification. For multi-level or dimmable systems, measurements shall be at the highest setting. Acceptable measurement error is +/−3%.

(v) *Dehumidifiers.* Dehumidifiers manufactured on or after October 1, 2007, shall have an energy factor that meets or exceeds the following values:

Product capacity (pints/day)	Minimum energy factor (liters/kWh)
25.00 or less	1.00
25.01–35.00	1.20
35.01–54.00	1.30
54.01–74.99	1.50
75.00 or more	2.25

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 is revised to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 6. Section 431.1 of subpart A is revised to read as follows:

§ 431.1 Purpose and scope.

This part establishes the regulations for the implementation of provisions relating to commercial and industrial equipment in Part B of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291–6309) and in Part C of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6311–6317), which establishes an energy conservation program for certain commercial and industrial equipment.

■ 7. Part 431 is amended by adding a new subpart C consisting of §§ 431.61, 431.62, and 431.66 to read as follows:

Subpart C—Commercial Refrigerators, Freezers and Refrigerator-Freezers

§ 431.61 Purpose and scope.

This subpart contains energy conservation requirements for commercial refrigerators, freezers and refrigerator-freezers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

§ 431.62 Definitions concerning commercial refrigerators, freezers and refrigerator-freezers.

Commercial refrigerator, freezer, and refrigerator-freezer means refrigeration equipment that—

(1) Is not a consumer product (as defined in § 430.2 of part 430);

(2) Is not designed and marketed exclusively for medical, scientific, or research purposes;

(3) Operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(4) Displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically;

(5) Has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(6) Is designed for pull-down temperature applications or holding temperature applications; and

(7) Is connected to a self-contained condensing unit or to a remote condensing unit.

Holding temperature application means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.

Integrated average temperature means the average temperature of all test package measurements taken during the test.

Pull-down temperature application means a commercial refrigerator with doors that, when fully loaded with 12 ounce beverage cans at 90 degrees F, can cool those beverages to an average stable temperature of 38 degrees F in 12 hours or less.

Remote condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

Self-contained condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an integral part of the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.66 Energy conservation standards and their effective dates.

(a) In this section—

(1) The term ''AV'' means the adjusted volume (ft^3) (defined as 1.63 x frozen temperature compartment volume (ft^3) + chilled temperature compartment volume (ft^3)) with compartment volumes measured in accordance with the Association of Home Appliance Manufacturers Standard HRF1–1979.

(2) The term ''V'' means the chilled or frozen compartment volume (ft^3) (as defined in the Association of Home Appliance Manufacturers Standard HRF1–1979).

(b) Each commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit designed for holding temperature applications manufactured on or after January 1, 2010, shall have a daily energy consumption (in kilowatt hours per day) that does not exceed the following:

Category	Maximum daily energy consumption (kilowatt hours per day)
Refrigerators with solid doors	0.10V + 2.04.
Refrigerators with transparent doors	0.12V + 3.34.
Freezers with solid doors	0.40V + 1.38.
Freezers with transparent doors	0.75V + 4.10.
Refrigerator/freezers with solid doors	the greater of 0.27AV–0.71 or 0.70.

(c) Each commercial refrigerator with a self-contained condensing unit designed for pull-down temperature applications and transparent doors manufactured on or after January 1, 2010, shall have a daily energy consumption (in kilowatt hours per day) of not more than 0.126V + 3.51.

§ 431.71 [Amended]

■ 8. Section 431.71 of subpart D is amended by revising ''42 U.S.C. 6311–6316'' to read ''42 U.S.C. 6311–6317''.

§ 431.81 [Amended]

■ 9. Section 431.81 of subpart E is amended by revising ''42 U.S.C. 6311–6316'' to read ''42 U.S.C. 6311–6317''.

§ 431.91 [Amended]

■ 10. Section 431.91 of subpart F of part 431 is amended by revising ''42 U.S.C. 6311–6316'' to read ''42 U.S.C. 6311–6317''.

■ 11. In § 431.92 of subpart F of part 431, revise the definitions of ''large commercial package air-conditioning and heating equipment'' and ''small commercial package air-conditioning and heating equipment'', and add new definitions for the terms ''commercial package air-conditioning and heating equipment'' and ''very large commercial package air-conditioning and heating equipment'' in alphabetical order to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Commercial package air-conditioning and heating equipment means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application.

* * * * *

Large commercial package air-conditioning and heating equipment means commercial package air-conditioning and heating equipment that is rated—

(1) At or above 135,000 Btu per hour; and

(2) Below 240,000 Btu per hour (cooling capacity).

* * * * *

Small commercial package air-conditioning and heating equipment means commercial package air-conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity).

* * * * *

Very large commercial package air-conditioning and heating equipment means commercial package air-conditioning and heating equipment that is rated—

(1) At or above 240,000 Btu per hour; and

(2) Below 760,000 Btu per hour (cooling capacity).

■ 12. Section 431.97 of subpart F of part 431, is amended by:

■ a. Designating the existing text as paragraph (a) and adding the words ''and before January 1, 2010'' after the language in parentheses; and

■ b. Adding new paragraph (b) to read as follows:

§ 431.97 Energy efficiency standards and their effective dates.

* * * * *

(b) Commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall have Energy Efficiency Ratio and Coefficient of Performance no less than:

Product	Cooling capacity (Btu/h)	Category	Efficiency level
Small commercial package air-conditioning and heating equipment (air-cooled).	≥65,000 and <135,000	AC	EER = 11.2* EER = 11.0**
		HP	EER = 11.0* EER = 10.8**
Large commercial package air-conditioning and heating equipment (air-cooled).	≥135,000 and <240,000	AC	EER = 1 1.0* EER = 10.8**
		HP	EER = 10.6* EER = 10.4**
Very large commercial package air-conditioning (air-cooled)	≥ 240,000 and <760,000	AC	EER = 10.0* EER = 9.8**
		HP	EER = 9.5* EER = 9.3**
Small commercial package air-conditioning heat pump	≥65,000 and <135,000	HP	COP = 3.3
Large commercial package air-conditioning heat pump	≥135,000 and <240,000	HP	COP = 3.2
Very large commercial package air-conditioning heat pump	≥ 240,000 and <760,000	HP	COP = 3.2

* This EER level applies to equipment that has electric resistance heat or no heating.
** This EER level applies to equipment with all other heating-system types that are integrated into the unitary equipment.
* EER at a standard temperature rating of 95°F dry-bulb and COP at a high temperature rating of 47°F dry-bulb.

§ 431.101 [Amended]

■ 13. Section 431.101 of subpart G is amended by revising ''42 U.S.C. 6311–6316'' to read ''42 U.S.C. 6311–6317''.

■ 14. Part 431 is amended by adding a new subpart H consisting of §§ 431.131, 431.132, and 431.136 to read as follows:

Subpart H—Automatic Commercial Ice Makers

§ 431.131 Purpose and scope.

This subpart contains energy conservation requirements for commercial ice makers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

§ 431.132 Definitions concerning automatic commercial ice makers.

Automatic commercial ice maker means a factory-made assembly (not necessarily shipped in 1 package) that—

(1) Consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice; and

(2) May include means for storing ice, dispensing ice, or storing and dispensing ice.

Harvest rate means the amount of ice (at 32 degrees F) in pounds produced per 24 hours.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.136 Energy conservation standards and their effective dates.

Each automatic commercial ice maker that produces cube type ice with capacities between 50 and 2500 pounds

per 24-hour period when tested according to the test standard established in accordance with section 343 of EPCA (42 U.S.C. 6314) and is manufactured on or after January 1, 2010, shall meet the following standard levels:

Equipment type	Type of cooling	Harvest rate (lbs ice/24 hours)	Maximum energy use (kWh/100 lbs ice)	Maximum condenser water use * (gal/100 lbs ice)
Ice Making Head	Water	<500	7.80–0.0055H	200–0.022H.
Ice Making Head	Water	≥500 and <1436	5.58–0.0011H	200–0.022H.
Ice Making Head	Water	<1436	4.0	200–0.022H.
Ice Making Head	Air	<450	10.26–0.0086H.	Not applicable.
Ice Making Head	Air	<450	6.89–0.0011H	Not applicable.
Remote Condensing (but not remote compressor).	Air	<1000	8.85–0.0038H	Not applicable.
Remote Condensing (but not remote compressor).	Air	≥1000	5.1	Not applicable.
Remote Condensing and Remote Compressor.	Air	<934	8.85–0.0038H	Not applicable.
Remote Condensing and Remote Compressor.	Air	≥934	5.3	Not applicable.
Self Contained	Water	<200	11. 40–0.019H	191–0.0315H.
Self Contained	Water	<200	7.6	191–0.0315H.
Self Contained	Air	<175	18.0–0.0469H	Not applicable.
Self Contained	Air	<175	9.8	Not applicable.

H Harvest rate in pounds per 24 hours.
* Water use is for the condenser only and does not include potable water used to make ice.

■ 15. Part 431 is amended by adding a new subpart I to read as follows:

Subpart I—Commercial Clothers Washers

Sec.
431.151 Purpose and scope.
431.152 Definitions concerning commercial clothers washers.

Test Procedures

431.154 Test procedures.

Energy Conservation Standards

431.156 Energy and water conservation standards and effective dates.

Subpart I—Commercial Clothes Washers

§ 431.151 Purpose and scope.

This subpart contains energy conservation requirements for commercial clothes washers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

§ 431.152 Definitions concerning commercial clothes washers.

Commercial clothes washer means a soft-mounted front-loading or soft-mounted top-loading clothes washer that—

(1) Has a clothes container compartment that—

(i) For horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) For vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(2) Is designed for use in—

(i) Applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) Other commercial applications.

Test Procedures

§ 431.154 Test procedures.

The test procedures for residential clothes washers in Appendix J1 to subpart B of part 430 of this title shall be used to test commercial clothes washers.

Energy Conservation Standards

§ 431.156 Energy and water conservation standards and effective dates.

Each commercial clothes washer manufactured on or after January 1, 2007, shall have—

(1) A modified energy factor of at least 1.26; and

(2) A water consumption factor of not more than 9.5.

Subpart K (§§ 431.190 through 431.196) [Redesignated as Subpart U (§§ 431.381 through 431.387)]

■ 16. Part 431 is amended by redesignating subpart K as subpart U and redesignating §§ 431.190 through 431.196 as §§ 431.381 through 431.387.

■ 16a. A new Subpart K consisting of §§ 431.191, 431.192, and 431.196 is added to part 431 to read as follows:

Subpart K—Distribution Transformers

§ 431.191 Purpose and scope.

This subpart contains energy conservation requirements for distribution transformers, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6309.

§ 431.192 Definitions concerning distribution transformers.

Distribution transformer means a transformer that—

(1) Has an input voltage of 34.5 kilovolts or less;

(2) Has an output voltage of 600 volts or less; and

(3) Is rated for operation at a frequency of 60 Hertz; however, the term ''distribution transformer'' does not include—

(i) A transformer with multiple voltage taps, the highest of which equals at least 20 percent more than the lowest;

(ii) A transformer that is designed to be used in a special purpose application and is unlikely to be used in general purpose applications, such as a drive transformer, rectifier transformer, auto-transformer, Uninterruptible Power System transformer, impedance transformer, regulating transformer, sealed and non-ventilating transformer, machine tool transformer, welding transformer, grounding transformer, or testing transformer; or

(iii) Any transformer not listed in paragraph (3)(ii) of this definition that is excluded by the Secretary by rule because—

(A) The transformer is designed for a special application;

(B) The transformer is unlikely to be used in general purpose applications; and

(C) The application of standards to the transformer would not result in significant energy savings.

Low-voltage dry-type distribution transformer means a distribution transformer that—

(1) Has an input voltage of 600 volts or less;

(2) Is air-cooled; and

(3) Does not use oil as a coolant.

Transformer means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.196 Energy conservation standards and their effective dates.

(a) *Low Voltage Dry-Type Distribution Transformers.* The efficiency of a low voltage dry-type distribution transformer manufactured on or after January 1, 2007, shall be no less than the following:

Single phase efficiency		Three phase efficiency	
kVA	Low voltage	kVA	Low voltage
15	97.7	15	97.0
25	98.0	30	97.5
37.5	98.2	45	97.7
50	98.3	75	98.0
75	98.5	112.5	98.2
100	98.6	150	98.3
167	98.7	225	98.5
250	98.8	300	98.6
333	98.9	500	98.7
		750	98.8
		1000	98.9

(Source: Table 4–2 of National Electrical Manufacturers Association (NEMA) Standard TP–1–2002, ''Guide for Determining Energy Efficiency for Distribution Transformers.'')

(b) *Liquid-Immersed Distribution Transformers.* [Reserved]

(c) *Medium Voltage Dry-Type Distribution Transformers.* [Reserved]

Subpart L (§§ 431.201 through 431.207) [Redesignated as Subpart V (§§ 431.401 through 431.407)]

■ 17. Part 431 is amended by redesignating subpart L as subpart V and redesignating §§ 431.201 through 431.207 as §§ 431.401 through 431.407.

■ 17a. A new subpart L consisting of §§ 431.201, 431.202, and 431.206 is added to part 431 to read as follows:

Subpart L—Illuminated Exit Signs

§ 431.201 Purpose and scope.

This subpart contains energy conservation requirements for illuminated exit signs, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6309.

§ 431.202 Definitions concerning illuminated exit signs.

Illuminated exit sign means a sign that—

(1) Is designed to be permanently fixed in place to identify an exit; and

(2) Consists of an electrically powered integral light source that—

(i) Illuminates the legend ''EXIT'' and any directional indicators; and

(ii) Provides contrast between the legend, any directional indicators, and the background.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.206 Energy conservation standards and their effective dates.

An illuminated exit sign manufactured on or after January 1, 2006, shall have an input power demand of 5 watts or less per face.

Subpart M (§§ 431.211 through 431.220) [Redesignated as Subpart W (§§ 431.421 through 431.430)]

■ 18. Part 431 is amended by re-designating subpart M as subpart W and redesignating §§ 431.211 through 431.220 as §§ 431.421 through 431.430.

■ 18a. A new subpart M consisting of §§ 431.221, 431.222, and 431.226 is added to part 431 to read as follows:

Subpart M—Traffic Signal Modules and Pedestrian Modules

§ 431.221 Purpose and scope.

This subpart contains energy conservation requirements for traffic signal modules and pedestrian modules, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6309.

§ 431.222 Definitions concerning traffic signal modules and pedestrian modules.

Pedestrian module means a light signal used to convey movement information to pedestrians.

Traffic signal module means a standard 8-inch (200 mm) or 12-inch (300 mm) traffic signal indication that—

(1) Consists of a light source, a lens, and all other parts necessary for operation; and

(2) Communicates movement messages to drivers through red, amber, and green colors.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.226 Energy conservation standards and their effective dates.

Any traffic signal module or pedestrian module manufactured on or after January 1, 2006, shall meet both of the following requirements:

(a) Have a nominal wattage no greater than:

	Maximum wattage (at 74 °C)	Nominal wattage (at 25 °C)
Traffic Signal Module Type:		

	Maximum wattage (at 74 °C)	Nominal wattage (at 25 °C)
12″ Red Ball	17	11
8″ Red Ball	13	8
12″ Red Arrow	12	9
12″ Green Ball	15	15
8″ Green Ball	12	12
12″ Green Arrow	11	11
Pedestrian Module Type:		
Combination Walking Man/Hand	16	13
Walking Man	12	9
Orange Hand	16	13

(b) Be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

■ 19. Part 431 is amended by adding a new subpart N consisting of §§ 431.241, 431.242, and 431.246 to read as follows:

Subpart N—Unit Heaters

§ 431.241 Purpose and scope.

This subpart contains energy conservation requirements for unit heaters, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6309.

§ 431.242 Definitions concerning unit heaters.

Unit heater means a self-contained fan-type heater designed to be installed within the heated space; however, the term does not include a warm air furnace.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.246 Energy conservation standards and their effective dates.

A unit heater manufactured on or after August 8, 2008, shall:

(a) Be equipped with an intermittent ignition device; and

(b) Have power venting or an automatic flue damper.

■ 20. Part 431 is amended by adding a new subpart O consisting of §§ 431.261, 431.262, and 431.266 to read as follows:

Subpart O—Commercial Prerinse Spray Valves

§ 431.261 Purpose and scope.

This subpart contains energy conservation requirements for commercial prerinse spray valves, pursuant to section 135 of the Energy Policy Act of 2005, Pub. L. 109–58.

§ 431.262 Definitions concerning commercial prerinse spray valves.

Commercial prerinse spray valve means a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.266 Energy conservation standards and their effective dates.

Commercial prerinse spray valves manufactured on or after January 1, 2006, shall have a flow rate of not more than 1.6 gallons per minute.

■ 21. Part 431 is amended by adding a new subpart P consisting of §§ 431.281, 431.282, and 431.286 to read as follows:

Subpart P—Mercury Vapor Lamp Ballasts

§ 431.281 Purpose and scope.

This subpart contains energy conservation requirements for mercury vapor lamp ballasts, pursuant to section 135 of the Energy Policy Act of 2005, Pub. L. 109–58.

§ 431.282 Definitions concerning mercury vapor lamp ballasts.

High intensity discharge lamp means an electric-discharge lamp in which—

(1) The light-producing arc is stabilized by bulb wall temperature; and

(2) The arc tube has a bulb wall loading in excess of 3 Watts/cm^2, including such lamps that are mercury vapor, metal halide, and high-pressure sodium lamps.

Mercury vapor lamp means a high intensity discharge lamp in which the major portion of the light is produced by radiation from mercury operating at a partial pressure in excess of 100,000 PA (approximately 1 atm), including such lamps that are clear, phosphor-coated, and self-ballasted.

Mercury vapor lamp ballast means a device that is designed and marketed to start and operate mercury vapor lamps by providing the necessary voltage and current.

Test Procedures [Reserved]

Energy Conservation Standards

§ 431.286 Energy conservation standards and their effective dates.

Mercury vapor lamp ballasts shall not be manufactured or imported after January 1, 2008.

Subparts Q–T—[Reserved]

■ 22. Subparts Q through T are added and reserved.

[FR Doc. 05–20701 Filed 10–17–05; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1237]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Oklahoma City branch office of the Federal Reserve Bank of Kansas City and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Dallas and delete the reference to the Columbus office of the Federal Reserve Bank of Cleveland and reassign the routing symbols listed under that office to the Cincinnati branch office and the head office of that Reserve Bank. These amendments will ensure that the information in appendix A accurately describes the actual structure of check processing operations within the Federal Reserve System. The amendments to the routing symbol lists in appendix A under the Federal Reserve Bank of Cleveland differ from the Board's September 28, 2004, general advance notice. (See 69 FR 57837.)

DATES: The amendments to appendix A under the Tenth and Eleventh Federal Reserve Districts (Federal Reserve Banks of Kansas City and Dallas) are effective on December 10, 2005. The amendments to appendix A under the Fourth Federal Reserve District (Federal Reserve Bank of Cleveland) that revise the listings for the Cincinnati Branch office and amend the listings for the Columbus office are effective January 21, 2006. The amendments to appendix A under the Fourth Federal Reserve District that revise the listings for the Cleveland head office and delete the remaining listings for the Columbus office are effective February 11, 2006.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a local check than by a nonlocal check. A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for local checks are considered nonlocal.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on September 28, 2004, the Federal Reserve Banks have decided to reduce further the number of locations at which they process checks.[2] The amendments set forth in this notice are part of a series of appendix A amendments related to that decision, and the Board will issue separate notices for each phase of the restructuring.[3]

As part of the restructuring process, the Oklahoma City branch office of the Federal Reserve Bank of Kansas City will cease processing checks on December 10, 2005, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the head office of the Federal Reserve Bank of Dallas. Also as part of the restructuring process, on January 21, 2006, banks with 0442 and 2442 routing symbols, currently assigned to the Columbus office of the Federal Reserve Bank of Cleveland for check processing purposes, will be reassigned to the Cleveland Reserve Bank's Cincinnati branch office. On February 11, 2006, banks with 0440, 2440, 0441, and 2441 routing symbols, also currently assigned to the Columbus office for check processing purposes, will be reassigned to the Cleveland Reserve Bank's head office and the Columbus office will cease processing checks. Banks in the current Columbus, Cincinnati, and Cleveland check processing regions should note that the Reserve Banks' transfer of the Columbus office's check processing operations to both the Cincinnati branch office and the Cleveland head office differs from prior Federal Reserve Bank announcements indicating that the entirety of the Columbus office's operations would be transferred to the Cleveland head office. The Reserve Banks believe that this arrangement will better serve the needs of affected depository institutions. Because the Dallas, Cincinnati, and Cleveland check processing regions serve, or will serve as a result of these changes, banks located in multiple Federal Reserve districts, banks located in these regions cannot determine that a check is nonlocal solely because the paying bank for that check is located in another Federal Reserve district. As a result of these changes, some checks that are drawn on and deposited at banks located in the affected check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

To assist banks in identifying local and nonlocal banks, the Board accordingly is amending the lists of routing symbols associated with the Federal Reserve Banks of Cleveland, Kansas City, and Dallas to conform to the transfer of operations from the Kansas City Reserve Bank's Oklahoma City branch office to the Dallas Reserve Bank's head office and from the Cleveland Reserve Bank's Columbus office to that Reserve Bank's Cincinnati branch office and head office. To coincide with the effective date of the underlying check processing changes, the amendments affecting the Federal Reserve Banks of Kansas City and Dallas are effective December 10, 2005. The amendments affecting the Federal Reserve Bank of Cleveland that list the 0442 and 2442 routing symbols under the Cincinnati Branch office are effective January 21, 2006, and the amendments that list the 0440, 2440, 0441, and 2441 routing symbols under the head office and delete the reference to the Columbus office are effective February 11, 2006.

The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice also will enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[4] The Board is providing earlier-than-usual notice of the amendments to the appendix A routing symbol lists under the Federal Reserve Bank of Cleveland because these amendments differ from what was set forth in the September 28, 2004, general advance notice. The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the September 2004 **Federal Register** document.

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] *See* 69 FR 57837, September 28, 2004.

[3] In addition to the general advance notice of future amendments provided by the Board, and the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *www.frbservices.org.*

[4] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendix are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the § 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. These technical amendments to appendix A of Regulation CC will (1) delete the reference to the Oklahoma City branch office of the Federal Reserve Bank of Kansas City and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Dallas and (2) delete the reference to the Columbus office of the Federal Reserve Bank of Cleveland and reassign the routing symbols listed under that office to the Cincinnati Branch office and the head office of that Reserve Bank. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. Effective December 10, 2005, the Tenth and Eleventh Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A To Part 229—Routing Number Guide To Next-Day Availability Checks and Local Checks

* * * * *

Tenth Federal Reserve District

[Federal Reserve Bank of Kansas City]

Head Office

1010	3010
1011	3011
1012	3012
1019	3019

Denver Branch

1020	3020
1021	3021
1022	3022
1023	3023
1070	3070
1240	3240
1241	3241
1242	3242
1243	3243

Eleventh Federal Reserve District

[Federal Reserve Bank of Dallas]

Head Office

1030	3030
1031	3031
1039	3039
1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122
1123	3123
1130	3130
1131	3131
1140	3140
1149	3149
1163	3163

* * * * *

■ 3. Effective January 21, 2006, the Fourth Federal Reserve District routing symbol list in Appendix A is amended by removing the listings for 0442 and 2442 from the Columbus office and by revising the Cincinnati listings to read as follows:

Appendix A To Part 229—Routing Number Guide To Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

* * * * *

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423
0442	2442
0515	2515
0519	2519
0740	2740
0749	2749
0813	2813
0830	2830
0839	2839
0863	2863

* * * * *

■ 4. Effective February 11, 2006, the Fourth Federal Reserve District routing symbol list in Appendix A is amended by deleting the remaining listings and heading for the Columbus office, and revising the listings for the Cleveland head office to read as follows:

Appendix A To Part 229—Routing Number Guide To Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434
0440	2440
0441	2441
0720	2720
0724	2724

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, October 11, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–20661 Filed 10–17–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064–AC94

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interpretive rule; request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending an interpretative rule (12 CFR 333.101(b)) which states that insured State nonmember banks not exercising trust powers may offer self-directed traditional Individual Retirement and Keogh Plan accounts without the prior written consent of the FDIC. As amended, the interpretive ruling is expanded to expressly cover Coverdell Education Savings Accounts, Roth

Individual Retirement Accounts, Health Savings Accounts, and other similar accounts.

DATES: These amendments are effective October 18, 2005. Submit comments on or before January 17, 2006.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- E-mail: *comments@fdic.gov*. Include ''Part 333—Extension of Corporate Powers'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and use the title ''Part 333—Extension of Corporate Powers.'' All comments will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Anthony J. DiMilo, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–7496, or Benjamin W. McDonough, Attorney, Legal Division, (202) 898–7411, Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 333.2 of the FDIC's regulations (12 CFR 333.2) prohibits an insured nonmember bank from changing the general character of its business without the prior written consent of the FDIC. In general, exercising trust powers constitutes a change in the general character of the business of an insured nonmember bank that requires the prior written consent of the FDIC. FDIC interpretive rule at 12 CFR 333.101(b) (section 333.101(b)) makes clear, however, that an insured nonmember bank that does not have authority to exercise trust powers may act as trustee or custodian of specific retirement accounts so long as the bank does not exercise investment discretion or provide any investment advice with respect to the accounts. (50 FR 10754).

Prior to the issuance of amendments to section 333.101(b) in 1985, this interpretive rule stated that insured nonmember banks could act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (ERISA) [1] and Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 [2] (traditional IRAs and Keogh Plan accounts). However, a bank taking advantage of section 333.101(b) was permitted to invest the funds held in these accounts only in its own time or savings deposits. (41 FR 2375). The 1985 amendments revised section 333.101(b) to state that FDIC-regulated banks not exercising trust powers could offer self-directed traditional IRAs and Keogh Plan accounts where the customer could direct the bank to invest the funds from such plans in assets other than the bank's own deposits ''at the direction of the customer provided the bank does not exercise any investment discretion or provided [*sic*] any investment advice with respect to such account assets.'' (50 FR 10754).

Since 1985, Congress has introduced new accounts with tax-incentive features analogous to traditional IRAs and Keogh Plan accounts. These other accounts include: Coverdell Education Savings Accounts [3] and Roth Individual Retirement Accounts,[4] both established pursuant to the Taxpayer Relief Act of 1997, and Health Savings Accounts,[5] established pursuant to the Medicare Prescription Drug Improvement, and Modernization Act of 2003. Accordingly, the FDIC is amending section 333.101(b) to reflect the creation of these new accounts and to make clear in the text of section 333.101(b) that ''other similar accounts'' with tax-incentive features may be offered by banks that lack authority to exercise trust powers.[6] The primary purpose of these amendments is to formally recognize the existence of these new accounts, which did not exist when the FDIC last amended section 333.101(b) in 1985.

The revision to section 333.101(b) retains the requirements that the bank's duties be custodial or ministerial, and that the acceptance of such accounts without trust powers be consistent with the applicable state law.[7]

The revision also makes some minor technical amendments to the regulatory text to correct typographical errors in section 333.101(b).

II. Request for Comments

These amendments to part 333 will be effective upon publication. However, the FDIC is interested in receiving any comments that may improve the implementation of the rule. The FDIC therefore requests comments on all aspects of this interpretive rule. The FDIC is especially interested in learning whether there are other accounts that it would be appropriate to include expressly within the scope of the rule, and conversely, whether it would be appropriate to exclude any facially similar accounts from the scope of the rule. The FDIC will accept comments for 90 days from the date of publication.

III. Regulatory Analysis

a. Administrative Procedure Act

Public Comment Waiver and Effective Date. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) (''APA''), the FDIC is issuing this interpretation without prior notice and comment. Section 553(b) of Title 5, U.S. Code, does not apply to interpretive rules. The amendments to section 333.101(b) of the FDIC's regulations relate solely to an interpretive rule, and the Board of Directors of the FDIC has found that, because the primary purpose of the amendments is to formally recognize the creation of new accounts, notice and comment would be unnecessary. Moreover, pursuant to the APA, 5 U.S.C. 553(d), interpretive rules do not require thirty days prior notice before they may become effective; therefore, because section 333.101(b) is an interpretive

[1] *See* 26 U.S.C. 408.

[2] *See* 26 U.S.C. 401.

[3] *See* 26 U.S.C. 530.

[4] *See* 26 U.S.C. 408A.

[5] *See* 26 U.S.C. 223.

[6] Currently, national banks without fiduciary powers may act as custodian, but not as trustee, of retirement accounts. *See* 12 CFR 9.3. Institutions regulated by the Office of Thrift Supervision (OTS) may act as trustee or custodian of traditional IRAs and Keogh Plan accounts without the prior approval of the OTS. 12 CFR 550.580.

[7] These amendments to section 333.101(b) will not impact the FDIC's supervision of the trust and custodial activities of insured nonmember banks, including the trust and fiduciary services such banks provide to accounts with tax-incentive features. The FDIC will continue to supervise the trust and fiduciary activities of insured nonmember banks through regular examinations to ensure that banks comply with their fiduciary obligations to customers in accordance with applicable State and Federal law.

rule, the amendments to it may have immediate effect.

b. Paperwork Reduction Act

The amendment to section 333.101(b) will not entail any new collections of information. Therefore, the Paperwork Reduction Act is not applicable.

c. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when an agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the FDIC is revising an interpretive rule without notice and comment, no regulatory flexibility analysis is required.

d. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*) (SBREFA) provides generally for agencies to report rules to Congress and for Congress to review these rules. Unless covered by an exception in SBREFA (5 U.S.C. 804(3)), the reporting requirement is triggered in instances where the FDIC issues a rule as defined by the APA. Because the FDIC is issuing an interpretive rule, which is not covered by one of the exceptions in SBREFA, the FDIC will file the reports required by SBREFA.

List of Subjects in 12 CFR Part 333

Bank, Banking, State nonmember banks, Trusts and trustees.

■ For the reasons set forth in this preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 333 to Title 12 of the Code of Federal Regulations as follows:

PART 333—EXTENSION OF CORPORATE POWERS

■ 1. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (''Seventh'', ''Eighth'' and ''Tenth''), 1828, 1828(m), 1831p–1(c).

■ 2. Section 333.101 is amended by revising paragraph (b) to read as follows:

§ 333.101 Prior consent not required.

* * * * *

(b) An insured State nonmember bank, not exercising trust powers, may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without the prior written consent of the Corporation provided:

(1) The bank's duties as trustee or custodian are essentially custodial or ministerial in nature,

(2) The bank is required to invest the funds from such plans only

(i) In its own time or savings deposits, or

(ii) In any other assets at the direction of the customer, provided the bank does not exercise any investment discretion or provide any investment advice with respect to such account assets, and

(3) The bank's acceptance of such accounts without trust powers is not contrary to applicable State law.

Dated at Washington, DC, this 6th day of October, 2005.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 05–20768 Filed 10–17–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM310; Special Conditions No. 25–306–SC]

Special Conditions: Gulfstream Aerospace Limited Partnership (GALP) Model G150 Airplane; Windshield Coating in Lieu of Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Limited Partnership (GALP) Model G150 airplane. This airplane will have a novel or unusual design feature associated with use of a hydrophobic coating, rather than windshield wipers, as the means to maintain a clear portion of the windshield during precipitation conditions, as required by the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. 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.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION CONTACT: John McConnell, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1365; facsimile (425) 227–1320, e-mail *john.mcconnell@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2002, GALP applied for an amendment to Type Certificate Number A16NM to include the new GALP Model G150 airplane. The GALP Model G150, which is a derivative of the GALP Model G100 currently approved under Type Certificate Number A16NM, is intended to be a nine passenger executive airplane with a maximum takeoff weight of 26,000 pounds and a maximum operating altitude of 45,000 feet.

The GALP Model G150 flightdeck design incorporates a hydrophobic coating to provide adequate pilot compartment view in the presence of precipitation. Sole reliance on such a coating, without windshield wipers, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.101, GALP must show that the Model G150 meets the applicable provisions of the regulations incorporated by reference in Type Certificate Number A16NM or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Number A16NM are 14 CFR part 25, effective February 1, 1965, including Amendment 25–1 through Amendment 25–107.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the

change. GALP has elected to voluntarily comply with Amendment 25–108 for the G150 type certification program.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model G150 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 Model G150 must comply with (1) either the ''No Acoustical Change'' provisions of § 21.93(b) or 14 CFR part 36, as amended by Amendments 36–1 through 36–24, and (2) either the ''No Emission Change'' provisions of § 21.93(c) or 14 CFR part 34, as amended by Amendment 34–1 through Amendment 34–3.

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 the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The GALP Model G150 will incorporate the following novel or unusual design feature: Hydrophobic windshield coating as the sole means to maintain a clear portion of the windshield, during precipitation conditions, sufficient for both pilots to have a sufficiently extensive view along the flight path.

Discussion

Section 25.773(b)(1) requires that both pilots of a transport category airplane be provided a means to maintain a sufficiently clear portion of the windshield during precipitation conditions, and that this clear portion of the windshield must have a sufficiently extensive view along the flight path. The regulations require this means to maintain such an area during precipitation in heavy rain at speeds up to 1.5 V_{SR1}.

This requirement has existed in principle since 1953 in Part 4b of the Civil Air Regulations (CAR). Section 4b.351(b)(1) of CAR 4b required that ''Means shall be provided for maintaining a sufficient portion of the windshield clear so that both pilots are afforded a sufficiently extensive view along the flight path in all normal flight attitudes of the airplane. Such means shall be designed to function under the following conditions without continuous attention on the part of the crew: (i) In heavy rain at speeds up to 1.6 V_{S1}, flaps retracted.'' Effective December 26, 2002, Amendment 25–108, changed the speed for effectiveness of the means to maintain an area of clear vision from up to 1.6 V_{S1} to 1.5 V_{SR1} to accommodate the redefinition of the reference stall speed from the minimum speed in the stall, V_{S1}, to greater than or equal to the 1–g stall speed, V_{SR1}. As noted in the preamble to the final rule for that amendment, the reduced factor of 1.5 on V_{SR1} is to maintain approximately the same speed as the 1.6 factor on V_{S1}.

The requirement that the means to maintain a clear area of forward vision must function at high speeds and high precipitation rates is based on the use of windshield wipers as the means to maintain an adequate area of clear vision in precipitation conditions. The requirement in 14 CFR 121.313(b), and in 14 CFR 125.213(b), to provide ''a windshield wiper or equivalent for each pilot station'' has remained unchanged since at least 1953.

The effectiveness of windshield wipers to maintain an area of clear vision normally degrades as airspeed and precipitation rates increase. It is assumed that because high speeds and high precipitation rates represent limiting conditions for windshield wipers, they will also be effective at lower speeds and precipitation levels. Accordingly, § 25.773(b)(1)(i) does not require maintenance of a clear area of forward vision at lower speeds or lower precipitation rates.

A forced airflow blown directly over the windshield has also been used to maintain an area of clear vision in precipitation. The limiting conditions for this technology are comparable to those for windshield wipers. Accordingly, introduction of this technology did not present a need for special conditions to maintain the level of safety embodied in the existing regulations.

Hydrophobic windshield coatings may depend to some degree on airflow directly over the windshield to maintain a clear vision area. The heavy rain and high-speed conditions specified in the current rule do not necessarily represent the limiting conditions for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear area of the windshield in low speed flight or during ground operations. Alternatively, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher than normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear vision area on the windshield.

In addition to potentially depending on airflow to function effectively, hydrophobic coatings may also be dependent on water droplet size for effective precipitation removal. For example, precipitation in the form of a light mist may not be sufficient for the coating's properties to result in maintaining a clear area of vision.

In summary, the current regulations identify speed and precipitation rate requirements that represent limiting conditions for windshield wipers and blowers, but not for hydrophobic coatings, so it is necessary to issue special conditions to maintain the level of safety represented by the current regulations.

These special conditions provide an appropriate safety standard for the hydrophobic coating technology as the means to maintain a clear area of vision by requiring it to be effective at low speeds and precipitation rates as well as the higher speeds and precipitation rates identified in the current regulation. These are the only new or changed requirements relative to those in § 25.773(b)(1) at Amendment 25–108.

Discussion of Comments

Notice of proposed special conditions No. 25–05–07 for the Gulfstream Aerospace Limited Partnership Model G150 airplane was published in the **Federal Register** on June 30, 2005 (70 FR 37715). Only one commenter responded to the notice.

Using Hydrophobic Coating Is Not Novel and Unusual

The commenter, Gulfstream, states that the FAA defines hydrophobic coating as ''a novel and unusual design feature on one model of airplane.'' The commenter notes that the hydrophobic coating proposed for the Model G150 has actually accumulated a significant service history and has been certified on numerous transport airplanes.

We infer that the commenter does not agree that the use of hydrophobic coating should be identified as ''a novel and unusual design feature.'' We do not

agree. We believe that the previous approvals for using hydrophobic coating should have included special conditions in the type certification basis. As is the case for the Model G150, the use of hydrophobic coatings in lieu of windshield wipers represents a novel design feature relative to the certification basis of each of those airplane types. While the satisfactory service history indicates that these particular designs would likely have met the requirements of the special conditions, the existing regulatory requirements would not by themselves have necessarily assured the intended level of safety for the use of hydrophobic coating for precipitation removal for these designs, or for other designs. Special conditions are necessary to address the use of hydrophobic coating instead of windshield wipers. No changes were made as a result of this comment.

Sufficient View

The commenter recommends that the term ''sufficient view'' be changed to ''sufficient view depending on aircraft speed.'' The commenter states that the visibility requirements for taxi are different than the requirements for flight.

We do not agree with the commenter's recommendation. The existing regulatory requirements in 14 CFR 25.773(b)(1), at Amendment 25–108, do not explicitly include this qualification. As with the existing requirements, the interpretation of ''sufficient view'' in these special conditions may be dependent on several factors other than airplane speed, such as phase of flight or ground operations. No changes were made as a result of this comment.

Changes to the Proposed Special Conditions

The reference to ''the flight path in normal flight attitudes of the airplane'' has been changed to ''the ground or flight path in normal taxi and flight attitudes of the airplane.'' This change clarifies a possible ambiguity regarding the path of the airplane relative to the speeds necessary to maintain the clear vision area. While this additional language is absent from the requirement of § 25.773(b)(1), it is consistent with the intended level of safety. As noted in the Discussion section of the Notice of Proposed Special Conditions, the existing requirements are premised on the use of windshield wipers or other means for which slow speeds and minimal airflow are not limiting conditions for maintaining an area of clear vision. Hydrophobic coatings, however, are least effective at slow speeds and low airflow rates. To maintain the same level of safety as the existing regulations, the certification basis must address both ground and flight operations, as reflected by the speed and airflow range included in the proposed special conditions.

We also changed the Discussion section to correct the effective date of Amendment 25–108 from December 26, 1990, to December 26, 2002. In addition, we made editorial changes to the Discussion section to clarify certain information regarding airspeed. Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model G150. Should GALP apply at a later date for a change to the type certificate to include other type designs incorporating the same novel or unusual design feature, the special conditions would apply to those models as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

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 type certification basis for Gulfstream Aerospace Limited Partnership (GALP) Model G150 airplanes.

Pilot Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers

The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the ground or flight path in normal taxi and flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Renton, Washington, on October 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20864 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22421; Airspace Docket No. 05–ASW–1]

RIN 2120–AA66

Revision of Jet Routes J–8, J–18, J–19, J–58, J–76, J–104 and J–244; and VOR Federal Airways V–60, V–190, V–263 and V–611; Las Vegas, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Jet Routes J–8, J–18, J–19, J–58, J–76, J–104 and J–244; and Very High Frequency Omni-directional Range (VOR) Federal Airways V–60, V–190, V–263 and V–611 over the Las Vegas, NM, area. The FAA is taking this action due to the renaming of the ''Las Vegas VOR tactical air navigation (VORTAC)'' to the ''Fort Union VORTAC.'' The name of the Las Vegas, NM, VORTAC is being changed to enhance the management of aircraft operations over the Las Vegas, NM, area by eliminating the possibility of confusion with the Las Vegas, NV, VORTAC. The FAA is also making editorial changes to update the format of the legal descriptions for VOR Federal Airways V–190, V–263 and V–611.

DATES: Effective Dates: 0901 UTC, December 22, 2005.

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

SUPPLEMENTARY INFORMATION:

History

To reduce confusion between the Las Vegas, NM, VORTAC and the Las Vegas, NV, VORTAC, a decision was made to change the name of the ''Las Vegas, NM, VORTAC'' to the ''Fort Union, NM, VORTAC.'' Because the name of the VORTAC is contained in the legal description of J–8, J–18, J–19, J–58, J–76, J–104 and J–244; and V–60, V–190, V–263 and V–611, the legal descriptions

must be changed. The FAA is also making editorial changes to update the format of the legal descriptions for VOR Federal Airways V–190, V–263 and V–611 by eliminating references to mileages and altitudes that are no longer included in the legal descriptions of airways.

Jet Routes and Federal airways are published in paragraphs 2004 and 6010(a), respectively of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Jet Routes and Federal airways listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the legal descriptions for Jet Routes J–8, J–18, J–19, J–58, J–76, J–104 and J–244; and VOR Federal Airways V–60, V–190, V–263 and V–611 over the Las Vegas, NM, area. The FAA is taking this action due to the renaming of the Las Vegas, NM, VORTAC and to enhance the management of aircraft operations over the Las Vegas, NM, area. Further, the FAA is making editorial changes to update the format of the legal descriptions for VOR Federal Airways V–190, V–263 and V–611. There are no geographical changes to the affected Jet routes and VOR Federal airways. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–8 (Revised)

From Needles, CA, via Flagstaff, AZ; Gallup, NM; Fort Union, NM; Borger, TX; INT Borger 095° and Kingfisher, OK, 261° radials; Kingfisher; Springfield, MO; St Louis, MO; Louisville, KY; Charleston, WV; INT Charleston 092° and Casanova, VA, 253° radials; to Casanova.

* * * * *

J–18 (Revised)

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Phoenix, AZ; St. Johns, AZ; Albuquerque, NM; Fort Union, NM; Garden City, KS; Salina, KS; St. Joseph, MO; to Moline, IL.

* * * * *

J–19 (Revised)

From Phoenix, AZ, via INT Phoenix 053° and Zuni, NM, 242° radials; Zuni; INT Zuni 059° and Fort Union, NM, 268° radials; Fort Union; Liberal, KS; Wichita, KS; Butler, MO; St. Louis, MO; Roberts, IL; to Northbrook, IL.

* * * * *

J–58 (Revised)

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Rattlesnake, NM; Fort Union, NM; Panhandle, TX; Wichita Falls, TX; Ranger, TX; Alexandria, LA; Harvey, LA.

* * * * *

J–76 (Revised)

From Las Vegas, NV, via INT Las Vegas 090° and Tuba City, AZ, 268° radials; Tuba City; Fort Union, NM; Tucumcari, NM; to Wichita Falls, TX.

* * * * *

J–104 (Revised)

From Los Angeles, CA, via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; Parker, CA; INT Parker 112° and Gila Bend, AZ, 312° radials; Gila Bend; Tucson, AZ; San Simon, AZ; Socorro, NM; Fort Union, NM; to Pueblo, CO.

* * * * *

J–244 (Revised)

From Fort Union, NM; Zuni, NM; INT Zuni 242° and Phoenix, AZ, 053° radials; Phoenix.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

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V–60 (Revised)

From Gallup, NM, via INT Gallup 089° and Albuquerque, NM, 303° radials; Albuquerque, via INT Albuquerque 103° and Otto, NM, 253° radials; Otto; to Fort Union, NM.

* * * * *

V–190 (Revised)

From Phoenix, AZ; St. Johns, AZ; Albuquerque, NM; Fort Union, NM, Dalhart, TX; Gage, OK; INT Gate 059° and Pioneer, OK, 280° radials; Pioneer; INT Pioneer 094° and Bartlesville, OK, 256° radials; Bartlesville; INT Bartlesville 075° and Oswego, KS, 233° radials; Oswego; INT Oswego 085° and Springfield, MO, 261° radials; Springfield; Maples, MO; Farmington, MO; Marion, IL; Pocket City, IN.

* * * * *

V–263 (Revised)

From Corona, NM, INT Corona 278° and Albuquerque, NM, 160° radials; Albuquerque; INT Albuquerque 019° and Santa Fe, NM, 268° radials; Santa Fe; Fort Union, NM; Cimarron, NM; Tobe, CO; Lamar, CO; Hugo, CO; INT Hugo 345° and Akron, CO, 232° radials; to Akron. From Pierre, SD; Aberdeen, SD.

* * * * *

V–611 (Revised)

From Newman, TX, via INT Newman 286° and Truth or Consequences, NM, 159° radials; Truth or Consequences; INT Truth or Consequences 028° and Socorro, NM, 189° radials; Socorro; Albuquerque, NM; INT Albuquerque 036° and Santa Fe, NM, 245° radials; Santa Fe; Fort Union, NM; Cimarron, NM; Pueblo, CO; Black Forest, CO; INT Black Forest 036° and Gill, CO, 149° radials; Gill; Cheyenne, WY; Muddy Mountain, WY; Crazy Woman, WY; Sheridan, WY; Billings, MT; INT Billings 347° and Lewistown, MT, 104° radials; Lewistown; INT Lewistown 322° and Havre, MT, 226° radials; to Havre.

* * * * *

Issued in Washington, DC, on October 11, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–20852 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153, 157 and 375

[Docket No. RM05–31–000; Order No. 665]

Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities

Issued October 7, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations in accordance with section 311(d) of the Energy Policy Act of 2005 (EPAct 2005) to establish mandatory procedures requiring prospective applicants to begin the Commission's pre-filing review process at least six months prior to filing an application for authorization to site and construct a liquefied natural gas (LNG) terminal. Section 311(d) of EPAct 2005, enacted on August 8, 2005, directs the Commission to promulgate such regulations within 60 days after enactment of EPAct 2005. The regulations' mandatory procedures are designed to encourage applicants for LNG terminal siting and construction authority to cooperate with state and local officials, as required by EPAct 2005. The regulations also make the pre-filing process mandatory for prospective applicants for authority to construct related jurisdictional pipeline and other natural gas facilities, as defined in the regulations. The regulations also require a prospective applicant to comply with the pre-filing procedures prior to filing an application to make modifications to an existing or authorized LNG terminal if such modifications involve significant state and local safety considerations that have not been previously addressed. Under this Final Rule, prospective applicants may elect on a voluntary basis to undertake the pre-filing process prior to filing applications for other facilities subject to the Commission's jurisdiction under the Natural Gas Act (NGA).

EFFECTIVE DATE: The rule will become effective November 17, 2005.

FOR FURTHER INFORMATION CONTACT:

Richard Hoffmann, Office of Energy Projects, 888 First Street, NE., Washington, DC 20426, (202) 502–8066, *richard.hoffmann@ferc.gov.*

John Leiss, Office of Energy Projects, 888 First Street, NE., Washington, DC 20426, (202) 502–8058, *john.leiss@ferc.gov.*

Whit Holden, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8089, *edwin.holden@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. Pursuant to section 311(d) of the Energy Policy Act of 2005 (EPAct 2005),[1] enacted on August 8, 2005, the Commission is required, by October 7, 2005, to promulgate regulations requiring prospective applicants for authorization for the siting and construction of liquefied natural gas (LNG) terminals (as defined in EPAct 2005) to comply with the Commission's pre-filing review process, beginning at least six months prior to filing an application. As further required by EPAct 2005, the proposed regulations are designed to encourage applicants to cooperate with state and local officials, a goal also contemplated by the National Environmental Policy Act of 1969 (NEPA).[2] This Final Rule fulfills the Commission's responsibilities under section 311(d) of EPAct 2005.

2. The mandatory procedures established in this Final Rule require that a prospective applicant for authority to site and construct an LNG terminal submit information necessary for NEPA pre-filing review of the LNG terminal, as defined in EPAct 2005. A prospective applicant for authority to construct related jurisdictional pipeline and other natural gas facilities, as defined in the regulations, is also required to undertake the mandatory pre-filing review process. A prospective applicant is also required to comply with the pre-filing procedures prior to filing an application to make modifications to an existing LNG terminal if such modifications involve significant state and local safety considerations that have not been previously addressed. This Final Rule provides that prospective applicants may elect on a voluntary basis to undertake the pre-filing process prior to filing applications for other facilities subject to the Commission's jurisdiction under the Natural Gas Act (NGA).

II. Notice of Proposed Rulemaking

3. In response to EPAct 2005's directive with respect to LNG terminals, the Commission issued a Notice of Proposed Rulemaking (NOPR) on August 26, 2005, in Docket No. RM05–31–000 setting forth proposed regulations to implement a mandatory pre-filing process for prospective applicants for authority under section 3 of the NGA for the siting and construction of new LNG terminals.[3] As explained in the NOPR, it was already the Commission's policy prior to enactment of EPAct 2005 to encourage prospective applicants' use of the Commission's optional pre-filing process for LNG terminal projects, as well as interstate gas pipeline projects in appropriate cases, to encourage early involvement by the public and governmental agencies, as contemplated by NEPA and Council on Environmental Quality (CEQ) regulations. Further, because it is desirable to maximize early public involvement to promote the wide-spread dissemination of information about proposed projects and to reduce the amount of time required to issue an environmental impact statement (EIS) or environmental assessment (EA) once an application is filed, the Commission's Office of Energy Projects (OEP) developed its current guidelines for going beyond informal discussions into a more formal pre-filing process.[4]

4. As explained in the NOPR, the Commission's experience with the current pre-filing process is that it has been used with much success since its introduction several years ago. It is a process with which the natural gas industry, governmental entities and the public are familiar. However, the current pre-filing process is optional, and EPAct 2005 requires that the Commission implement a mandatory, rather than elective, pre-filing process

[1] Public Law 109–58, 119 Stat. 594.

[2] 42 U.S.C. 4321, *et seq.*

[3] 112 FERC ¶ 61,232 (2005); 70 FR 52328 (September 2, 2005).

[4] Under the Commission's optional pre-filing process, the Commission's staff provides prospective applicants guidelines which are described at length in the NOPR. As explained in the NOPR, the current guidelines were developed because in certain respects the collaborative pre-filing procedures set forth in section 157.22 of the Commission's regulations, 18 CFR 157.22 (2005), have proven to be impracticable. Therefore, as proposed in the NOPR, the Commission is eliminating the collaborative process procedures of section 157.22 in conjunction with the promulgation of new regulations in this rulemaking proceeding.

for review of a planned LNG terminal prior to the filing of an application pursuant to section 3 of the NGA for authorization of the siting and construction of the new LNG terminal. Therefore, the Commission's NOPR used the existing guidelines as the basis for proposing regulations to establish the mandatory pre-filing process for new LNG terminals.

5. Although EPAct 2005 requires a mandatory pre-filing process only for prospective applicants for new LNG terminals, the Commission must consider in one NEPA document the environmental impacts of the LNG terminal and related facilities. Therefore, the Commission also proposed in the NOPR to make the mandatory pre-filing process applicable to prospective applicants for authority to construct related jurisdictional pipeline and other natural gas facilities. Further, in recognition that the safety concerns raised by modifications to existing LNG terminals in some instances can be largely the same as those addressed by EPAct 2005's provisions relating to the siting and construction of new LNG terminals, the Commission proposed in the NOPR to make the pre-filing process mandatory in those instances as well.

III. Comments

6. The NOPR stated that comments were to be filed by September 14, 2005, and that the Commission intended to issue final regulations by October 7, 2005, in order to comply with EPAct 2005's 60-day deadline. Comments were filed by 24 interested parties.[5]

7. The largest group of commenters consists of current and prospective owners, operators and developers of LNG terminal facilities. Another group is comprised of natural gas pipeline companies. A third definable group includes the Public Utilities Commission of the State of California (California PUC), the California Energy Commission and the Office of the Governor of the State of Maine (Maine Governor's Office), all representing state and local interests. The Interstate Natural Gas Association of America (INGAA), American Gas Association (AGA), Maryland Conservation Council, Center for Liquefied Natural Gas (Center for LNG) and National Association of Regulatory Utility Commissioners (NARUC) also submitted comments in line with their respective interests.

8. The comments filed in response to the NOPR are discussed at length below, broken down by specific issues. Broadly speaking, however, the comments primarily focused on the NOPR's proposal that the pre-filing process also be mandatory for prospective applicants for authorization of other jurisdictional natural gas facilities necessary to transport regasified LNG from an LNG terminal and for prospective applicants for authorization of modifications to existing LNG terminals; the need for flexibility in the substance and timing of many of the pre-filing requirements; and implementation of EPAct 2005's directive that the mandatory pre-filing process for new LNG terminals encourage prospective applicants' cooperation with state and local officials. Numerous clarifications of the proposed regulations were also requested.

Related Jurisdictional Pipeline Facilities

9. El Paso Pipeline Corporation Pipeline Group (El Paso),[6] Exxon Mobil Corporation (ExxonMobil), Dominion Cove Point LNG, LP (Cove Point), Cheniere LNG, Inc. (Cheniere), Duke Energy Gas Transmission (Duke Energy),[7] and INGAA state that the NOPR's proposal that the mandatory pre-filing procedures apply to prospective applicants for authorization for jurisdictional natural gas facilities related to LNG terminals is inconsistent with, if not contrary to, the mandate of Congress as expressed in section 311(d) of EPAct 2005. These commenters point out that EPAct 2005's definition of an LNG terminal specifically excludes ''any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 [of the NGA].'' [8]

10. ExxonMobil asserts that requiring prospective applicants for related pipeline facilities to undergo a mandatory ''180-day stand-down period'' could prevent the timely expansion of the related LNG project. El Paso contends that the establishment of a minimum six-month pre-filing process for such facilities is inconsistent with the notion of flexibility. Similarly, Duke Energy contends that because LNG terminal proposals have longer lead times, a rigid, six-month pre-filing process for some related pipeline projects will be inappropriate and unworkable.

11. Duke Energy also argues that extending the mandatory pre-filing process to prospective applicants for construction authorization under section 7 of the NGA is inconsistent with that section, since section 7 does not place any qualifications on when a natural gas company may file a certificate application. Duke Energy and Cove Point take the position that the Commission's authority pursuant to EPAct 2005 to compel a pre-filing process for pipeline facilities is limited to pipeline facilities which are properly viewed as part of the LNG terminal and for which authorization must be obtained under section 3, rather than section 7, of the NGA. Sempra Global argues that the public interest could be harmed by delaying the construction of other gas facilities needed to serve other customers.

12. ExxonMobil and Duke Energy contend that while the Commission may be required to evaluate the impacts of both the LNG terminal and related natural gas facilities in a single NEPA document, it does not follow that both the LNG terminal project and a related pipeline project must initiate their respective environmental review processes at the same time or follow the same procedures for developing and submitting all of the information necessary to prepare the EA or EIS.

13. A number of commenters seek clarification of the types of LNG-related pipeline projects that might be subject to the mandatory pre-filing procedures. At a minimum, Cove Point asks the Commission to clarify that applicability of the mandatory pre-filing process extends only to pipeline construction to be undertaken contemporaneously with construction or expansion of an LNG terminal. North Baja Pipeline, LLC (North Baja) maintains that the Commission should clarify that the mandatory pre-filing process will apply only to other natural gas facilities that will interconnect directly with a new LNG terminal.

14. BP Energy asks the Commission to clarify that the pre-filing requirement will be satisfied for minor pipeline facilities to interconnect with a new LNG terminal if the interconnecting pipeline facilities are addressed sufficiently in the LNG project developer's resource reports for purposes of the NEPA document. BP Energy does not believe a pipeline company should have to undertake the pre-filing process for minor interconnecting facilities if adequate

[5] The commenters are listed in the Appendix to this Final Rule.

[6] The El Paso Pipeline Corporation Group includes ANR Pipeline Company, ANR Storage Company, Bear Creek Storage Company, Blue Lake Gas Storage Company, Cheyenne Plains Gas Pipeline Company, Colorado Interstate Gas Company, El Paso Natural Gas Company, Mojave Pipeline Company, Southern LNG Inc., Southern Natural Gas Company, Tennessee Gas Pipeline Company and Wyoming Interstate Company, Ltd.

[7] Duke Energy owns Texas Eastern Transmission, L.P., Egan Hub Storage, L.L.C., Algonquin Gas Transmission, L.L.C., East Tennessee Natural Gas, L.L.C. and Saltville Gas Storage Company, L.L.C. Duke Energy is a part owner of Maritimes & Northeast Pipeline, L.L.C. and Gulfstream Natural Gas System, L.L.C.

[8] EPAct 2005, section 311(b).

information regarding the pipeline facilities is provided by the prospective LNG applicant during the pre-filing process.

15. Duke Power requests clarification that the pre-filing process will not be mandatory for prospective applicants for NGA section 7 authority for capacity expansion projects on existing pipeline systems in order to accommodate throughput originating from a new LNG terminal. INGAA maintains the Commission should clarify that applicants seeking to modify existing pipeline facilities related to existing LNG facilities may continue to use the pre-filing process on a voluntary basis.

Commission Response

16. The Commission recognizes that the definition of ''LNG terminal'' adopted by EPAct 2005 specifically excludes ''[a]ny pipeline or storage facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act.'' However, the Commission does not agree that this is an expression of Congressional intent that the Commission cannot or should not require a mandatory pre-filing process for jurisdictional gas facilities to be constructed in connection with LNG terminal facilities. Rather, the Commission believes the exclusion of section 7 facilities from EPAct 2005's definition of LNG terminal is better explained by other practical considerations. First, take-away pipelines or other related gas facilities do not involve the state and local safety concerns involved with the siting and construction of an LNG terminal. In addition, the exclusion of section 7 facilities from the definition of LNG terminal avoids making section 7 facilities subject to the provisions of new NGA section 3(e)(3)(B), added by section 311(c) of EPAct 2005, which provides that the Commission (1) shall not deny an LNG terminal application because the applicant proposes to use the LNG terminal exclusively or partially for its own gas or an affiliate's gas, and (2) shall not condition an order to require that an LNG terminal offer service to other customers or to regulate the rates or terms of service of the LNG terminal or to require the filing of rate schedules or contracts. In view of these considerations, the Commission concludes that, while EPAct 2005 mandates the pre-filing process only for prospective applicants for authority to site and construct new LNG terminals, nothing in EPAct 2005 limits the Commission's previous discretion under the NGA to require participation in the pre-filing process by prospective applicants for authority under section 7 of the NGA for related jurisdictional natural gas facilities.

17. The Commission has discussed above and in the NOPR that it needs to evaluate in a single NEPA document the environmental impacts of LNG projects and projects to construct related facilities. Further, an LNG project may prove infeasible if a take-away pipeline or other facilities cannot be approved or will not be constructed. Thus, to ensure the efficient utilization of the Commission's resources as well as to avoid unnecessary burden on other agencies and stakeholders, it has been Commission staff's practice to initiate the pre-filing process for new LNG facilities only when the prospective applicants for other necessary jurisdictional facilities are ready and willing to participate in the pre-filing process. For the same reasons, it is appropriate to make the pre-filing process mandatory for related jurisdictional facilities now that Congress has mandated a pre-filing process for new LNG terminals.[9]

18. To date, in every LNG project that has utilized the formal pre-filing process, the Commission's staff has required that the pre-filing process cover any related jurisdictional natural gas facilities. The Commission also reiterates that in its experience the current practice has been very successful, and there is a sense of familiarity with the process. Indeed, the Commission has seen no evidence that requiring the environmental analysis for an LNG terminal project to cover related pipeline facilities has impeded the timetable for the LNG terminal, regardless of whether the environmental review for the entire project was conducted during a pre-filing process or after the filing of an LNG terminal application.

19. In view of the above considerations, the Commission is not swayed by arguments that is inappropriate or infeasible to require that the mandatory pre-filing procedures require the participation of prospective applicants for related jurisdictional gas facilities. The prospective applicants for authority to construct necessary related facilities generally are known at the time a prospective LNG applicant initiates the pre-filing process. Therefore, the prospective LNG applicant and the prospective applicants for other related facilities should be able to commence the pre-filing process at the same time. Further, in view of the above-discussed reasons for why it is important that prospective applicants for LNG and related projects undertake the pre-filing process at the same time, the Commission expects there to be few instances where the circumstances justify the exercise of the Director's discretion to approve initiation of the pre-filing process for an LNG terminal project before the prospective applicants for related facilities are known and ready to begin the pre-filing process.

20. The Commission agrees with the commenters, however, that it is important to maintain flexibility in both the substantive and procedural requirements embodied in the pre-filing procedures. Therefore, as proposed in the NOPR, the Commission is providing in new section 375.308(z) of the regulations authority for the Director to act, on a case-specific basis, to make decisions and grant approvals, waivers and modifications, as well as issue guidance, as may be necessary in connection with the use of the pre-filing procedures set forth new in section 157.21. Thus, for example, a prospective applicant engaged in the pre-filing process for either LNG facilities or other facilities may request that the Director adjust the schedule for filing resources report or waive certain requirements if they are not applicable or unnecessary in view of the previously filed information.

21. In response to those commenters seeking clarification of the types of projects for natural gas facilities related to LNG facilities which will be subject to the mandatory pre-filing procedures, the Commission is providing a definition in section 153.2, *Definitions,* in Part 153, *Applications for Authorization to Construct, Operate, or Modiy Facilities used for the Export or Import of Natural Gas.* The definition provides:

(e) For purposes of this part and section 157.21, *related jurisdictional natural gas facilities* means any pipeline or other natural gas facilities which are subject to section 7 of the NGA; will directly interconnect with the facilities of an LNG terminal, as defined in paragraph (d) of this section; and which

[9] On some occasions, it is necessary for the NEPA document to evaluate the environmental impacts of related facilities which will be non-jurisdictional facilities. The Commission applies a four-prong procedure to determine the need to include non-jurisdictional facilities in an environmental review. See, *e.g.*, Southern Natural Gas Company, 119 FERC ¶ 61,052 at P 80 (2005). The necessary analysis of non-jurisdictional facilities may depend on the jurisdictional applicant's ability to provide sufficient information, since the Commission does not have the authority to compel non-jurisdictional companies' participation in the pre-filing process. However, the Commission does have the discretion to adopt and implement a policy to facilitate environmental review of an LNG project by establishing regulations under which an application for related jurisdictional facilities may be deemed deficient if the applicant did not participate in the pre-filing process.

are necessary to transport gas to or regasified LNG from:

(1) A planned but not yet authorized LNG terminal; or

(2) An existing or authorized LNG terminal for which prospective modifications are subject pursuant to section 157.21(e) to a mandatory pre-filing process.

22. This definition clarifies that for facilities related to LNG facilities the mandatory pre-filing process will be mandatory only for prospective applicants for authority under section 7 of the NGA for the construction or expansion of the capacity of gas facilities directly interconnecting with and related to the construction or expansion of an LNG terminal to import or export LNG. Thus, for example, if a take-away pipeline that directly interconnects with an existing LNG import terminal plans to seek authority under section 7 of the NGA to increase the pipeline's capacity, the pre-filing process will be mandatory for the pipeline's expansion project if it is related to a project to expand the LNG terminal's capacity. In the event additional capacity is needed on an existing take-away pipeline because the LNG terminal operator determines that it can increase its send-out volumes without making any modifications to its existing LNG facilities, the pre-filing process would not be a mandatory prerequisite to the Commission's approval of an application by the pipeline for expansion authority under section 7 of the NGA. However, the Commission encourages pipelines to consider in all instances whether undertaking the pre-filing process voluntarily might expedite approval of a contemplated project to expand the capacity of the pipeline's facilities that are directly interconnected with an LNG terminal.

23. In response to the request for clarification regarding ''minor'' interconnecting pipeline facilities, the Commission clarifies that the pre-filing requirement will be mandatory for prospective applicants for construction authority under section 7 of the NGA to construct pipeline facilities that will directly interconnect with a new LNG terminal. However, as discussed above, the Director OEP may find it appropriate to waive certain filing requirements for a prospective applicant for such related pipeline facilities to the extent the requirements are unnecessary or the information provided by the prospective LNG terminal applicant in its resource reports is adequate to cover the related pipeline facilities in the NEPA document.

24. If a pipeline plans to seek construction authority under section 7 of the NGA to construct a new direct interconnection with an *existing* LNG terminal,[10] the LNG terminal operator will need to seek authority under section 3 of the NGA to modify its LNG facilities to accommodate the new pipeline interconnection. In such instances, it will be necessary for the LNG terminal operator to obtain a finding by the Director of OEP as to whether the proposed modifications to the LNG facilities involve significant safety considerations warranting invocation of the mandatory pre-filing procedures. If the Director finds that the mandatory process should apply, it will be necessary for the prospective pipeline applicant for the direct interconnection to participate in the pre-filing process. Again, however, the Director may determine, based on the LNG project developer's resource reports and any other information in the record, that certain filing or other requirements can be waived for the prospective pipeline applicant seeking to construct the direct interconnection with the LNG terminal.

Modifications to Existing LNG Terminal Facilities

25. The NOPR's proposed new section 157.21(a) provided that the mandatory pre-filing procedures shall apply: When the Director of OEP finds in accordance with paragraph (e)(2) of this section that prospective modifications to an existing LNG terminal are significant modifications that involve state and local safety considerations.

26. Proposed section 157.21(e)(2) provided: The Director shall issue a notice making a determination whether prospective modifications to an existing LNG terminal shall be subject to this section's pre-filing procedures and review process. If the Director determines that the prospective modifications are significant modifications that involve state and local safety considerations, the Director's notice will state that the pre-filing procedures shall apply, and the pre-filing process shall be deemed to have commenced on the date of the Director's notice in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

[10] As several commenters point out, pipeline facilities directly interconnecting with an LNG terminal in order to receive regasified LNG are excluded from the definition of ''eligible facilities'' for purposes of an interstate pipeline's Part 157 blanket certificate authorizing certain construction activities. *See* 18 CFR 157.202(b)(2)(ii)(D) (2005).

27. ExxonMobil, Cove Point, Cheniere and the Center for LNG state that the NOPR's requirement that the mandatory pre-filing procedures apply to ''significant'' modifications to existing LNG terminals is inconsistent with, if not contrary to, the mandate of Congress as expressed in EPAct 2005. These commenters assert that section 311(d) of EPAct 2005 clearly reflects Congress' intent that the mandatory procedures should apply only to the siting and construction of new LNG terminals.

28. ExxonMobil, Cove Point and Distrigas of Massachusetts LLC (DOMAC) express concern because ''significant modifications involving state and local safety considerations'' are not defined and the criteria by which the Director would assess any modifications are not clearly set out. DOMAC believes the Director of OEP is given too much discretion.

29. Cove Point asserts that state and local safety considerations are not useful criteria, since they are involved, to some extent, in virtually all LNG terminal applications. ExxonMobil emphasizes that the role of local and state safety officials is not clearly explained and argues that under EPAct 2005 section 311(d), considerations regarding the need for consultation on safety issues only come into play for new LNG terminals. ExxonMobil also claims that when dealing with modifications to existing LNG facilities or to LNG facilities approved but not yet constructed, the need for resubmission of all 13 resource reports originally filed by the applicant is questionable, since not all of the resource reports deal with safety issues.

30. DOMAC states that the regulations should include the specific guidelines to be used by the Director in making determinations regarding whether modifications to an existing LNG terminal will be subject to a mandatory pre-filing process. ExxonMobil asserts that the NOPR's mandatory 180-day stand-down period for significant modifications could interfere with timely approval of an expansion of the capacity of an already approved but unconstructed LNG project. Cove Point and other commenters emphasize that modifications at existing LNG terminals generally involve relatively less environmental impact and shorter time periods.

31. Cove Point adds that if the Commission maintains the requirement that significant modifications follow the mandatory pre-filing process, then prospective applicants should be permitted to submit draft EAs. ExxonMobil argues that if Commission retains this requirement, the regulations

should clearly provide that only new safety issues being raised for the first time will justify requiring another pre-filing process for existing and approved LNG projects.

32. DOMAC believes that modifications should be deemed significant only if they are primarily intended to significantly increase an existing LNG terminal's throughput capacity on a sustained basis. As a threshold, DOMAC suggests that the prospective modifications result in at least a 10 percent increase in annual throughput to warrant requiring an existing LNG terminal operator to undertake a 6-month pre-filing process before it can file an application. Similarly, Trunkline LNG Company, L.L.C. (Trunkline LNG) requests that the Commission clarify that the mandatory pre-filing process will not be required for modifications to existing LNG terminals unless the current storage or send out capability is significantly increased.

33. El Paso requests that the final regulations set forth certain modifications to existing LNG terminals which it asserts involve no significant impacts or state and local safety concerns and therefore should qualify as categorical exclusions because there is no need for an EA. Specifically, El Paso recommends that categorical exclusions be codified for miscellaneous rearrangement and replacement of facilities at existing LNG terminals; new facilities installed within an existing structure at an existing LNG terminal; and new facilities installed within an existing disturbed area and with an estimated cost ceiling under the current cost ceiling for activities under pipelines' Part 157 blanket certificates.

34. In order to prevent 6-month delays of simple modifications to LNG projects that are already approved but not yet constructed, Sempra Global contends the Commission should clarify that modifications appearing to simply require a supplemental EA should not be deemed to be ''significant.'' Moreover, Sempra Global suggests that the pre-filing process regulations should provide that proposed projects be allowed to exit the pre-filing process before the end of six months if the Director subsequently determines that the proposal appears to require no more than an EA.

Commission Response

35. As discussed, proposed section 157.21(a) provided that in addition to new LNG terminals and related jurisdictional natural gas facilities, the mandatory pre-filing procedures would apply to any modifications of existing LNG facilities that the Director finds to be ''significant modifications that involve state and local safety considerations.'' After considering the comments seeking clarification of that provision or an explanation of the criteria by which the Director will evaluate any prospective modification, the Commission agrees the proposed regulatory text needs to be revised.

36. A more precise description of the sort of modifications that the Commission intends to be subject to the mandatory pre-filing process is ''modifications that involve significant state and local safety considerations that have not been previously addressed.'' The regulatory text in this Final Rule is revised accordingly. It should be clear from this revision that, when dealing with prospective modifications to existing or approved LNG projects, the emphasis is not on the nature or scale of the modification itself, but rather the significance or scale of the modification's impact on state or local safety considerations.

37. As discussed above, the Commission recognizes that section 311(d) of EPAct 2005 mandates the minimum 6-month pre-filing process only in connection with applications for the siting, construction and operation of new LNG facilities. However, as in the case of related jurisdictional natural gas facilities, nothing in EPAct 2005 or the NGA in any way limits the Commission's authority to include within the purview of the mandatory pre-filing rules modifications to an existing or approved LNG terminal that involve significant state and local safety considerations that have not been previously addressed.

38. Further, section 311(d) of EPAct 2005 adds a new section 3A(b) to the NGA which defines state and local safety considerations to include: (1) The kind and use of the facility; (2) the existing and projected population and demographic characteristics of the location; (3) the existing and proposed land use near the location; (4) the natural and physical aspects of the location; (5) the emergency response capabilities near the facility location; and (6) the need to encourage remote siting. Although not all of these factors may have application to a given project to make prospective modifications to an existing or approved LNG terminal, they provide the Director with specific criteria for evaluating any proposed modifications.[11]

39. In addition, in section 157.21(e)(2) of the final regulations, the Commission has identified certain prospective modifications that will be subject to the mandatory pre-filing process. As examples, the new regulatory text cites the addition of LNG storage tanks; increased throughput which will require additional tanker arrivals or the use of larger vessels; and changing the purpose of the facility from peaking to base load.

40. In any instance where the Director determines that proposed modifications warrant application of the mandatory pre-filing procedures, the Director can determine during the informal consultation required under paragraph 157.21(c) if an applicant-prepared EA will be appropriate.

41. In view of the clarification and regulatory text revisions discussed above, the Commission does not believe that it is necessary to include in the final regulations additional criteria or definitions for the Director's use in reaching a determination whether prospective modifications to an existing or approved LNG terminal should be subject to a mandatory pre-filing process. However, the Commission believes that it may be possible in the future to identify modifications to existing or approved LNG terminals that can be categorically excluded, as suggested by some commenters, from the need for an environmental assessment and the scope of the mandatory pre-filing procedures. It also may be possible in the future to adopt regulations, as suggested by a number of commenters, to provide blanket authority for LNG terminal operators to undertake certain routine activities subject to standard environmental conditions, as pipelines can under their Part 157 blanket certificates. However, in order to undertake any such initiatives, the Commission first needs the benefit of the experience that will come with application of this Final Rule's procedures.

Prospective Applicants Already Engaged in the Pre-Filing Process

42. Broadwater Energy (Broadwater) and North Baja ask that the Commission clarify in the final rule that the mandatory pre-filing process regulations are to be implemented prospectively and shall not apply to prospective

[11] Section 385.1902(a) of the Commission's regulations, 18 CFR 385.1902(a) (2005), provides that any action by the Director under delegated authority is a final agency action subject to a request for rehearing under Rule 713 of the Commission's Rules of Practice and Procedure, 18 CFR 385.713 (2005). Thus, in any instance where the Director finds that prospective modifications at an existing LNG terminal does or does not involve significant state or local safety concerns warranting a requirement that the prospective applicant undertake the pre-filing process, the Director's finding would be subject to a request for rehearing by the Commission.

applicants for LNG projects already engaged in the voluntary pre-filing process prior to the effective date of the pre-filing process regulations.

Commission Response

43. The Commission denies Broadwater's and North Baja's requested clarification. New section 3A(a) of the NGA, as added by section 311(d) of EPAct 2005, provides that the Commission's ''regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for authorization to construct an LNG terminal * * *.'' In any case where a prospective applicant for authority to site and construct a new LNG terminal was already engaged in the Commission's pre-filing process on the date of enactment of EPAct 2005, the Commission believes that it is consistent with Congressional intent to require at least a 6-month pre-filing process to ensure that there has been opportunity for the thorough exploration of state and local safety considerations, as envisioned by the section 311 of EPAct 2005. However, the Commission does not believe that it is inconsistent with this objective to take into account the time which a prospective applicant has already been involved in the pre-filing process. Therefore, the Commission will consider the 6-month period to have begun on the date on which the prospective applicant for authority to site and construct a new LNG terminal or related facilities was authorized to engage in the pre-filing process.

Jurisdiction Over Facilities Used To ''Process'' Gas

44. Trunkline LNG and INGAA request the Commission to clarify that it is not seeking through the LNG pre-filing process regulations to assert jurisdiction over the processing of natural gas. This clarification request is spurred by the fact that EPAct 2005 defines ''LNG terminal'' to include all natural gas facilities that are used to ''process'' natural gas.[12] According to Trunkline LNG and INGAA, the intent of Congress, in including as part of an LNG terminal those facilities that process gas, was to describe the ''process'' of converting liquid natural gas back to its gaseous state, rather than, for example, the non-jurisdictional processing of natural gas where liquids are removed from a raw gas stream for their economic value.

[12] *See* EPAct 2005 section 311(b)(11).

Commission Response

45. Section 311 of EPAct 2005 adds a definition of ''LNG terminal'' to section 2 of the NGA. The definition states, in pertinent part, that ''LNG Terminal means all natural gas facilities located onshore or in state waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas * * *.''

46. New section 3(e)(1) of the NGA, as added by section 311 of EPAct 2005, states that ''[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.''

47. Congress specifically provided for the new NGA definition of LNG terminal to include facilities to ''gasify, liquefy, or process natural gas.'' There would seem to be no purpose for the inclusion of the term ''process'' if the Commission were to interpret it, as urged by the commenters, as necessarily having exactly the same meaning as the term ''gasify''. However, the Commission agrees that its jurisdiction under the legislation with respect to processing of natural gas is limited to the siting, construction and operation of processing facilities that are part of an LNG import or export terminal and therefore included in the facilities for which a prospective applicant must seek authorization under section 3 of the NGA.

48. The Commission does not view EPAct 2005 as having in any way expanded the scope of section 7 of the NGA to processing facilities or processing as an activity. Thus, for example, if a company plans to construct facilities in proximity to a planned LNG terminal in order to remove liquids from regasified LNG sent out from the LNG terminal, the processing facilities will be neither import facilities for which NGA section 3 authorization is necessary nor facilities for the interstate transportation of gas for which NGA section 7 authority would be necessary. That being the case, the Commission will have no authority to authorize the siting or construction of facilities to process LNG or regasified LNG except to the extent such facilities are part of an LNG terminal. However, notwithstanding the non-jurisdictional status of any processing facilities, the environmental review of the LNG terminal project would have to include any facilities to be constructed for the purpose of processing regasified LNG from a new LNG terminal.

Pipeline Facilities To Receive Regasified LNG From Terminals in Federal Waters

49. Woodside Natural Gas, Inc. requests that the Commission clarify application of the mandatory pre-filing process to companies that may have filed permit applications pursuant to the Deepwater Port Act with other federal agencies for pipelines and other facilities that will be located in state waters but will be used to transport regasified LNG from a terminal located in federal or deepwaters.

Commission Response

50. A prospective applicant to construct a pipeline that will transport regasified LNG from an LNG terminal in federal or deepwater will not be subject to the Commission's mandatory pre-filing process. To the extent authorization under section 7 of the NGA is necessary for a portion of a pipeline to access an LNG terminal in federal or deepwater, the Commission encourages prospective applicants to undertake the pre-filing process on a voluntary basis. The Commission notes, however, that the U.S. Coast Guard is the agency responsible for approving the siting and construction of an LNG terminal located in federal waters, and it is for the U.S. Coast Guard, not the Commission, to consider in a single NEPA document the environmental impacts of such an LNG terminal and any related pipeline facilities, including pipelines over which the Commission retains jurisdiction under the NGA.

Need for Flexibility—Time Requirements

51. Cheniere, Cove Point, Nisource, Inc. (Nisource Pipelines),[13] Duke Energy, and INGAA are concerned that the NOPR's approach is in one way or another too rigid and too sharp a departure from the voluntary pre-filing program heretofore in place. A number of commenters state that they believe a more flexible pre-filing process is necessary and appropriate. Duke Energy states that the regulations should expressly provide that the Director has ability to modify procedures and deadlines to reflect unique circumstances.

52. Cove Point and Duke Energy assert that, unlike the flexible pre-filing process currently in use, many of the timelines and requirements proposed in the NOPR are unreasonable and unduly rigid, which could substantially

[13] Nisource, Inc. owns and operates four interstate pipelines: Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company and Granite State Gas Transmission, Inc.

lengthen the pre-filing process. Duke Energy comments that the inflexibility of the pre-filing process could have a ''chilling effect'' on prospective applicants who might shy away from voluntarily participating in the pre-filing process because they will not find it suitable to the circumstances of their proposed project. According to Cove Point, many of the deadlines should be established on a case-by-case basis, not on a rigid, tight schedule. Cheniere states that the Commission should consider a more flexible timeline for filing the application. Williston Basin Interstate Pipeline Company (Williston Basin) also comments that certain requirements may not be necessary in a given case, yet the regulations seem to eliminate discretion in the submittal of certain information. As an example, Williston Basin offers the requirement that a prospective applicant set up a Web site, regardless of the fact that public participation in a given case might not justify the time and expense involved.

53. Several commenters direct their attention to specific time requirements. INGAA, for example, states that the most onerous part of the pre-filing process is the preparation of Resource Reports 1 through 12, and therefore, the time for filing those reports should be extended from 60 to 120 days. ExxonMobil states that since decisions by the Director are triggering events for deadlines that a prospective applicant must meet, the Commission should impose in the regulations a time limit for the Director to act on requests to commence the pre-filing process and requests for findings on whether proposed modifications to existing or previously approved LNG terminals must be subject to the pre-filing process. Williston Basin is concerned that the timing requirements of proposed sections 157.21(f)(9) and 157.21(f)(10) are tied to the end of the scoping comment period, but the regulations do not state when the scoping period will begin or end.

Commission Response

54. The Commission acknowledged in the NOPR that, heretofore, when a prospective applicant has submitted a request to undertake the Commission's optional pre-filing process, it generally has been seven to eight months before an application was filed.[14] However, the minimum pre-filing period mandated by Congress for new LNG terminals is six months. Therefore, the NOPR proposed filing specifications in section 157.21(f) structured so that the potential exists for the pre-filing process to be completed in six months.

55. As discussed above, the Commission recognizes the need for flexibility in the application of the substantive and procedural requirements of the pre-filing procedures, in both mandatory and elective situations. The success of the pre-filing guidelines used by the Commission's staff and prospective applicants in recent years is attributable in significant measure to their flexibility. It is obvious that more time may be needed for the pre-filing process for some projects than for others. Further, in situations where the prospective applicant is not required to undertake the pre-filing process, there should be discretion for shortening the pre-filing process, if it can be completed in less than six months. The Commission also recognizes that in some instances certain required filings may not be applicable or may not need to be filed again, if sufficiently up-to-date information has been filed in a previous proceeding or by another prospective applicant in its resources reports for a contemporaneous related project.

56. In recognition of the above considerations, the Commission proposed in the NOPR to revise section 375.309(z) of the regulations to delegate to the OEP Director the authority to ''[a]pprove, on a case-specific basis, and make such decisions and issue guidance as may be necessary in connection with the use of the pre-filing procedures in § 157.21, *Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications.* The commenters' concerns that the pre-filing procedures may be too rigid may be due to the Commission's failure to emphasize in the NOPR the discretion that the Director will have in the pre-filing process to make appropriate adjustments to schedules and modifications or waivers of filing requirements. Based on experience with the pre-filing procedures in recent years, the Commission sees no need for the regulations to establish time limits, as suggested by some commenters, for the Director to take certain actions, such as granting or denying requests to commence the pre-filing process and reaching findings on whether proposed modifications to an existing or previously approved LNG terminal must be subject to the pre-filing process.

Waterway Suitability Assessment (WSA)

57. Proposed section 157.21(f)(13) of the regulations would have required a prospective applicant to certify at the commencement of the mandatory pre-filing process that a Follow-on WSA will be submitted to the U.S. Coast Guard no later than when the application for LNG terminal facilities authorization is filed with the Commission. Cheniere and Cove Point point out that, heretofore, a WSA has not been mandatory for all proposed projects. Cheniere observes that a WSA has no application where there are no marine issues, and Cove Point adds that the requirement in proposed section 157.21(a)(1) that a prospective applicant file a preliminary WSA with the U.S. Coast Guard when it files its initial filing seeking initiation of the pre-filing process effectively lengthens the process well beyond six months.

Commission Response

58. In response, the Commission is adding section 157.21(d)(12) to require that a prospective applicant certify in its initial filing seeking initiation of the pre-filing process that a Letter of Intent (LOI) and a Preliminary WSA have been submitted to the U. S. Coast Guard. In addition, the Commission is revising proposed 157.21(f)(13) to require that a prospective applicant file, upon the Director's issuance of a notice commencing the prospective applicant's pre-filing process, a certification that a Follow-On WSA will be submitted at the time the application is filed or that no LOI or WSA is required by the U.S. Coast Guard.

Cooperation With State and Local Officials and Other State and Local Issues

59. The California PUC and the California Energy Commission assert that the NOPR's proposed regulations fail to adequately ensure that prospective applicants for LNG facilities will cooperate with state and local officials. The Maine Governor's Office states that objective, timely, accurate and project-specific information is essential in order to ensure that all pertinent federal, state and local decisions are made only after a thorough identification and evaluation of all environmental, public safety and other issues. The California PUC states that while the proposed regulations ensure that Commission staff receives all needed information, the only requirement regarding state and local agencies is that the prospective applicant provide in its initial filing a list of relevant state and local agencies in the project area with permitting requirements and a statement indicating whether these agencies are aware of applicant's intent to use the pre-filing

[14] 112 FERC ¶61,232 at P 6 (2005).

process and have agreed to participate in the process.

60. The California PUC emphasizes that EPAct 2005 added several new provisions to the NGA to ensure the opportunity for participation by a state commission and, if not the same, the agency appointed by the governor pursuant to new section 3(A)(b) of the NGA added by section 311(d) of EPAct 2005.[15] The California PUC asserts that the Commission should require that prospective applicants provide such state agencies notice of the pre-filing process and all information provided to Commission staff during the process. In addition, the California PUC states that to ensure state and local officials' meaningful participation in the proceeding, prospective applicants should be required to serve their formal applications upon the appropriate state commission and, if not the same, the governor-designated agency. The California Energy Commission urges the Commission to ensure in the final rule that state and local governments will have timely access to non-internet public (NIP) and critical energy infrastructure (CEII) information.

61. In particular, the California PUC and California Energy Commission assert that prospective applicants should be required to file information specifically addressing state and local safety concerns that need to be addressed in the safety advisory report, which section 311(d) of EPAct 2005 requires the governor-appointed agency to submit within 30 days after an application is filed. As proposed, states the California PUC, there is no regulation requiring that a prospective applicant notify the state commissions and governor-designated agencies recognized by EPAct as having substantial roles in the pre-filing process for LNG projects.

62. The California Energy Commission also argues that the deadlines for prospective applicants to file draft Resource Report 13 and a WSA do not provide adequate opportunity for state and local agencies to review these safety-related materials before a state's safety advisory report is due. The Maine Governor's Office states that in addition to needing more time for state and local officials to assess these reports, the final rule should require that Resource Report 13 contain information needed to facilitate local and state officials' assessments of public safety issues and preparation of states' advisory safety reports.

63. The Maine Governor's Office also states that the Commission should clarify the Commission staff's role in the pre-filing process expressly includes cooperation with the applicant and state and local agencies to facilitate development of the state-local public safety plan and other reviews. In addition, the Maine Governor's Office contends that the Commission should revise proposed section 157.21(d) to require the prospective applicant to describe the specific means and actions by which it intends to coordinate with state and local officials to facilitate development of the safety plan. Moreover, the Maine Governor's Office states that section 157.21(f) should establish milestones regarding consultation with state and local officials to facilitate safety studies and development of safety plans; section 157.21(d) should be amended to require a prospective applicant to indicate its schedule and plans for addressing compliance with permitting and other local land use requirements; the Commission's staff should consult with applicants and state and local officials regarding the nature and contents of resource reports; and the final rule should specify that a prospective applicant's project Web site provide download access to project-related information submitted during the pre-filing process and that the project applicant make hard copies of such documents available for inspection in the community in which the LNG terminal will be located.

Commission Response

64. In response to the comments, the Commission has revised the regulatory text in section 157.21(d)(5) to require, in the case of prospective applicants for LNG facilities, that the list of relevant federal and state agencies (1) identify the agency designated by the governor of a state for purposes of consulting with the Commission regarding a new LNG terminal project to be located in the state or regarding modifications to an existing or approved LNG terminal which would raise significant new safety concerns, and (2) state that the governor-designated agency is aware of the prospective applicant's intention to use the pre-filing process. In addition, the Commission has revised the regulatory text in section 157.21(d)(11) to require that a prospective applicant's Public Participation Plan describe how the prospective applicant intends to respond to requests for information from the governor's designated agency for consultation regarding state and local safety considerations with respect to LNG facilities.

65. Once the pre-filing process is under way it is the responsibility of each stakeholder, including a state agency, to make the prospective applicant aware early in the process of the information it needs to perform its functions. State agencies' officials can make known at the beginning or early in the pre-filing process what materials they wish to receive. Of course, a state agency may adopt its own regulations to require that prospective applicants also file information with the state agency. However, the Commission does not believe this is necessary. If a prospective applicant is not forthcoming in providing requested information, a state agency may request that the Commission's staff or OEP Director provide assistance to ensure that the state agency receives in a timely manner the information needed to fulfill its responsibilities.[16]

66. The Commission emphasizes that is not aware of there being a problem in past pre-filing processes of prospective applicants' failing to cooperate in providing state agencies with such materials in a timely manner. Prospective applicants generally appreciate the fact that it is in their own best interests to cooperate with state and local agencies during the pre-filing process in order to expedite completion of the pre-filing process and the ultimate success of their planned projects. Further, since the Commission

[15] As amended by EPAct 2005, new section 3(A)(b) of the NGA provides that the governor of a state in which an LNG terminal is proposed to be located shall designate a state agency and that the Commission shall consult with such state agency regarding state and local safety considerations prior to acting on the application for the proposed LNG terminal. New section 3(A)(c) of the NGA provides that the state agency may furnish an advisory report on state and local safety considerations to the Commission not later than 30 days after an application for LNG facilities is filed with the Commission and that the Commission shall respond specifically to the issues raised by the state agency. New section 3(A)(d) of the NGA provides that after an LNG terminal is operational, the state agency may conduct safety inspections, report any alleged safety violations to the Commission, and the Commission shall transmit information regarding such allegations to the appropriate federal agency. New section 3(e)(2)(B) of the NGA requires the Commission to give notice of the hearing on an application for the siting and construction or expansion of an LNG terminal to the state commission and, if not the same, the governor-appointed state agency.

[16] The Commission also notes that much, if not most, of the information and materials filed by a prospective applicant during the pre-filing process will be in the Commission's eLibrary and accessible and downloadable via the Commission's Home Page on the Internet (*http://www.ferc.gov*), as well the Commission's Public Reference Room. The majority of filings with the Commission are available on eLibrary within 2 days. An agency also may register for an eSubscription to be notified of filings in a particular docket number and may contact the Administrative Law Section of the Commission's Office of the General Counsel regarding CEII and other non-Internet public (NIP) information.

believes that EPAct 2005's mandate that the Commission's regulations must require that prospective applicants for authority to site and construct new LNG terminals cooperate with state agencies, the Commission believes that this objective is significantly promoted by its implementation of a mandatory pre-filing process for new LNG terminals, as required by EPAct 2005. In any event, however, the Commission wishes to make clear from the outset that it does not read the legislation as obligating the prospective applicant to provide state agencies with material that is not clearly required by those state agencies' regulations for the permits or purposes in which those agencies are involved. Not all state agencies may want to receive all of the information filed by a prospective applicant with the Commission, and prospective applicants likely would be unnecessarily burdened by a rigid requirement that they provide state agencies with pre-filing materials that a state agency has not specifically indicated that it wants to receive.

67. As discussed in the NOPR, the pre-filing procedures set forth in the new regulations, like the current pre-filing procedures, require that prospective applicants engaged in the pre-filing process comply with the environmental conditions in Part 380 of the Commission's regulations. The Part 380 regulations admonish prospective applicants to file with appropriate state agencies as early as possible to avoid having the various permitting processes run consecutively rather than concurrently. The Part 380 regulations also require that prospective applicants submit extensive information and documentation which will be in the public record for the pre-filing process.[17] Much of this record information is relevant to agencies with responsibilities relating to state and local safety concerns and can be requested by such agencies. Given that longer lead times may be required for certain state authorizations which are required under federal mandate, it is in the prospective applicant's best interest to file as soon as possible all information that relevant state agencies will want to consider.[18]

68. Based on the Commission's experience in recent years, the pre-filing process has allowed opportunity and time for state agencies to participate, request information and formulate and present their views. However, the Commission will monitor the operation of the pre-filing procedures and regulations adopted by this Final Rule in order to determine whether further action is needed to address issues or problems relating to the pre-filing process. State agencies as well as other stakeholders may at any time bring to the Commission's attention perceived problems in how the pre-filing procedures are working.

Section 153.12

69. The NOPR proposed to remove section 153.12 because it refers to the collaborative procedures in section 157.22, which the Commission is eliminating in view of the new pre-filing procedures in section 157.21. BP Energy states that to avoid any confusion as to the applicability of the mandatory pre-filing regulations of Part 157 to applications under NGA section 3 for authorization to site, construct, modify and operate LNG terminals, an express statement to that effect, such as is included in section 153.12 needs to be retained. Consequently, states BP Energy, the Commission should not remove section 152.12 in its entirety as proposed in the NOPR.

Commission Response

70. The Commission agrees that it will be useful to preserve section 153.12's reference to the applicability of the definitions in section 157.1, as well as expressly confirm the applicability of the mandatory pre-filing procedures contained in section 157.21 to applications under section 3 of the NGA filed under subpart B of Part 153. Accordingly, the Commission will revise section 153.12 as suggested by BP Energy.

Section 157.21(d)(2)

71. Reacting to the requirement in proposed section 157.21(d)(2) that the prospective applicant's initial filing requesting the pre-filing process include a ''description of the zoning and availability of the proposed site and marine facility location,'' Keyspan LNG, L.P. (Keyspan) seeks clarification confirming that state and local zoning laws are preempted by the NGA and that the Commission will not be controlled by state and local administration of zoning laws in making its determination with respect to an application to construct LNG facilities pursuant to NGA section 3.

Commission Response

72. Proposed section 157.21(d) requires a prospective applicant's submission of information of the type heretofore included in a written request to use the voluntary pre-filing process. The Commission considers this information essential to its staff being able to fulfill its role in the pre-filing process. As described in the NOPR, that role includes: (1) Assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners and agencies); (2) issuing a Scoping Notice and conducting scoping for the proposal; (3)

[17] During the pre-filing process under the existing guidelines and under the new regulations codified by this Final Rule, prospective applicants have to comply with a number of regulations that require the submission of information relevant to state agencies' responsibilities or cooperation with such agencies. Section 380.3(b)(3) requires that a prospective applicant consult with appropriate federal, regional, state, and local agencies during the planning stages of a project to ensure that all potential environmental impacts are identified. Section 380.3(b)(4) requires that the prospective applicant submit applications for all federal and state approvals as early as possible in the planning process. Section 380.3(b)(5) requires that the prospective applicant notify the Commission's staff of all other federal actions required for completion of a project so that the Commission' s staff may coordinate with other interested federal agencies. Section 380.12(c)(2)(i)(D) requires that the prospective applicant provide any correspondence with the appropriate State Historic Preservation Officer or duly authorized Tribal Historic Preservation Officer for tribal lands regarding whether properties eligible for listing on the National Register of Historic Places would be affected by the project. Section 380.12(c)(2)(i)(E) requires that the prospective applicant provide correspondence with the U.S. Fish and Wildlife Service and National Marine Fisheries Service regarding the potential impact of facilities on federally listed threatened and endangered species. Section 380.12(c)(2)(i)(F) requires, in the case of facilities that will be located in a designated coastal zone management area, that a prospective applicant provide a consistency determination or evidence that the owner has requested a consistency determination from the state's coastal zone management program. Section 380.12(j)(12) requires that a prospective applicant demonstrate that applications for rights-of-way or other land use for a project will be filed with federal land-management agencies with jurisdiction over land that would be affected by the project.

[18] The California Energy Commission raises the need for appropriate state agencies to have timely access to critical energy infrastructure information (CEII). Section 388.112 of the Commission's regulations, 18 CFR § 388.112 (2005), sets forth procedures to be followed by any person submitting documents containing CEII. These procedures apply only to submissions of CEII to the Commission. CEII, as defined in section 388.113 of the regulations, includes information about proposed or existing natural gas facilities that could be used by a person planning an attack on critical energy infrastructure. The Commission's procedures in section 388.112 are designed to ensure that CEII is not placed in the Commission's public records. Section 157.21(h) of this Final Rule's regulations provides that a prospective applicant using the pre-filing procedures of this section shall comply with the procedures in § 388.112 for the submission of documents containing critical energy infrastructure information, as defined in § 388.113. However, the Commission strongly encourages prospective applicants to ensure that CEII information is made available at the same time to the Commission and the state agency designated by the Governor pursuant to new section 3(A)(b), as added by section 311(d) of EPAct 2005, for consultation with the Commission for purposes of EPAct 2005's provisions relating to LNG terminal facilities. The Commission's regulations in no way hinder a prospective applicant providing CEII information as is required by permitting agencies as part of their normal deliberations.

facilitating issue identification and resolution; (4) conducting site visits, examining alternatives, meeting with relevant federal, state and local and other stakeholders, and participating in the prospective applicant's public information meetings; (5) initiating the preparation of a preliminary EA or preliminary DEIS, which may include cooperating agency review; and (6) reviewing draft resource reports for the application that is to be filed with the Commission.

73. Proposed section 157.21(d)(2)'s request for ''a description of the zoning and availability of the proposed site and marine facility location'' should be viewed with only the above-described purposes in mind. While current zoning and availability are considerations that the Commission will take into account in weighing the public interest, section 157.21(d)(2) should not be interpreted as suggesting that the Commission will ultimately be controlled by state and local administration of zoning laws in making its determination regarding whether approval of a proposed site for LNG terminal facilities is in the public interest.

Section 157.21(f)(2)

74. BP Energy states that proposed section 157.21(f)(2) appears to assume but is not clear that the Director will identify the third-party contractor at the time that the Director issues its notice commencing the applicant's pre-filing process. BP Energy asks that the Commission clarify this section.

Commission Response

75. The Commission clarifies that, consistent with current practice under the pre-filing procedures, the Director's notice will identify the third-party contractor. The Final Rule reflects that practice in section 157.21(e)(2).

Section 157.21(f)(3)

76. Section 157.21(f)(3) requires a prospective applicant using the pre-filing procedures to inform ''stakeholders'' of the proposed project within 14 days of the Director's issuance of a notice commencing the pre-filing process. INGAA and Cove Point ask the Commission to clarify the term ''stakeholder.'' INGAA recommends that the prospective applicant be required to contact affected agencies, public officials and known interest groups. The Maryland Conservation Council, stressing the benefits of non-governmental organization (NGO) participation, urges the Commission to require prospective applicants to contact regionally active NGOs prior to initiation of the pre-filing process and scoping process. The Maryland Conservation Council contends that environmental NGO stakeholders can put forward alternative points of view and distribute accurate information, thereby ensuring against rumors and uncertainties surrounding the proposed project and the pre-filing process. As a result, the Maryland Conservation Council asserts that changes to the engineering and design can occur early in the project's timetable, citing the Cove Point LNG facility situation as an example of the benefits of NGO involvement.

Commission Response

77. Stakeholder means any agency or identifiable individual who may have a stake in the outcome of the project. This would include federal permitting agencies, state commissions and, if not the same, agencies designated by governors for purposes of consulting with the Commission on state and local safety considerations, state and local permitting agencies (especially those for federal authorizations as defined in federal legislation), local responders, affected tribes, appropriate NGOs, and affected landowners as defined in section 157.6(d) of the regulations. The Commission believes it is sufficient that appropriate NGOs be informed in the same manner and at the same time as all other stakeholders.

Applicability of Commission's Ex Parte Rules

78. Cove Point states that the Final Rule should clarify that the Commission's *ex parte* rules do not prohibit communications with the Commission's staff during the pre-filing process phase of a project.

Commission Response

79. Since there is no right under the Commission's regulations for interested persons to intervene in the pre-filing process, the process is not subject to Rule 2201 of the Commission's Rules of Practice and Procedure, 18 CFR 385.2201, which governs off-the-record communications.

Gas Interchangeability Issues

80. AGA urges the Commission to address the issue of gas interchangeability by requiring that a ''gas supply resource report'' assessing the impact of the imported LNG be incorporated into the pre-filing process. Furthermore, AGA contends that stakeholders to be contacted at the pre-filing stage should include those utilities that might receive imported LNG in their market areas, so that they might be able to resolve any gas interchangeability issues.

Commission Response

81. On May 19, 2005, the Commission issued a notice in Docket No. PL04–3–000 to seek comments on issues relating to gas interchangeability and the need to assure interchangeability of gas supplies in situations where regasified LNG is introduced into the market. The Commission is considering the comments and what regulatory steps it should take relating to gas interchangeability issues. Pending further action in Docket No. PL04–3–000, the Commission finds that it is premature to determine the extent to which it will be necessary or appropriate for such issues to be raised in a pre-filing proceeding under this Final Rule's procedures. The OEP Director, however, will have the discretion to determine whether gas interchangeability issues need to be addressed in a particular pre-filing proceeding. If the Director finds that such issues should be addressed in the pre-filing proceeding, local utilities concerned about such issues will be stakeholders.

II. Summary of Regulations

82. As discussed above and proposed in the NOPR, this Final Rule, in large measure, adopts the formal pre-filing process that the Commission currently utilizes when prospective applicants voluntarily elect to use the process. However, in this Final Rule, the Commission is making several revisions to the regulatory text set forth in the NOPR. First, section 153.2 of the regulations is amended by a new paragraph setting forth the definition of ''LNG terminal'' in the new section 3A of the NGA added by section 311(d) of EPAct 2005:

(d) *LNG Terminal* means all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by a waterborne vessel, but does not include:

(1) Waterborne vessels used to deliver natural gas to or from any such facility; or

(2) Any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act.

83. Section 153.2 of the regulations is amended by also adding the following definitions:

(e) For purposes of this part and section 157.21, *related jurisdictional natural gas facilities* means any pipeline or other natural gas facilities which are subject to section 7 of the NGA; will directly interconnect with the facilities of an LNG terminal, as defined in paragraph (d) of this section; and which are necessary to transport gas to or regasified LNG from:

(1) A planned but not yet authorized LNG terminal; or

(2) An existing or authorized LNG terminal for which prospective modifications are subject pursuant to section 157.21(e) to a mandatory pre-filing process.

(f) *Waterway Suitability Assessment (WSA)* means a document used by the U.S. Coast guard in assessing the suitability of a waterway for LNG marine traffic pursuant to 33 CFR 127.007. The Preliminary WSA initiates the process of analyzing the safety and security risks posed by proposed LNG tanker operations to a port and waterways, and the Follow-On WSA provides a detailed analysis of the same issues.

84. A new paragraph (c) is added to section 153.6 to state that no application for a new LNG terminal, modifications to an existing or approved LNG terminal found by the Director to involve significant, new safety considerations, or related jurisdictional gas facilities may be made before 180 days after the date of a notice by the OEP Director announcing commencement of a prospective applicant's pre-filing process under the procedures of section 157.21, as discussed above and described below. A new definition is added to section 157.1 to provide that, for the purposes of section 157.21, ''Director'' means the Director of the Commission's Office of Energy Projects.

85. New section 157.21 establishes the pre-filing process for LNG terminal facilities, as well as other natural gas facilities. The procedures are mandatory for any prospective applicant for authorization to site, construct and operate facilities included within the definition of ''LNG terminal,'' as defined in proposed section 153.2(d), and for any related jurisdictional natural gas facilities. The pre-filing procedures also are mandatory in cases where the Director finds that modifications to existing LNG terminal facilities involve significant state and local safety considerations that have not been previously addressed. As discussed below, the pre-filing review process remains voluntary for natural gas facilities not directly interconnected with LNG terminals.

86. To initiate the pre-filing review process under new section 157.21, a prospective applicant for LNG terminal facilities is required to make a filing containing certain material, as described below. New section 157.21(a)(2) provides that an application for LNG terminal facilities or related jurisdictional gas facilities (1) shall not be filed until at least 180 days after the date that the Director issues notice of the commencement of the prospective applicant's pre-filing process, and (2) shall contain all the information specified by Commission staff.

87. The information that a prospective applicant is required to submit pursuant to section 157.21(a)(2) includes draft environmental material in accordance with the provisions of Part 380 of the regulations implementing the Commission's procedures under NEPA. The requirements in Part 380 of the Commission's regulations supplement CEQ's regulations.[19] The procedures in Part 380 essentially follow CEQ procedures concerning early and efficient review of environmental issues, public notice and participation, scoping, interagency cooperation, comments, and timing of decisions on proposals.

88. The environmental material required by the Part 380 regulations is embodied in sections 380.12, 380.13, 380.14 and 380.15 and Appendix A to Part 380. Section 380.12 describes resource reports which list, in detail, the information the Commission needs to conduct an environmental review of a proposal under NEPA. It consists of 13 resource reports ranging from a detailed project description to descriptions of the existing environment and potential impacts on environmental resources such as water use and quality, fish, wildlife and vegetation, cultural resources, land use and aesthetics, and air and noise and, for LNG terminal facilities, engineering and design material.

89. Sections 380.13 and 380.14 provide procedures and detailed descriptions of what the prospective applicant is expected to do to help the Commission comply with its obligations under the Endangered Species Act and the National Historic Preservation Act. Section 380.15 identifies best practices for the prospective applicant to follow when siting and maintaining facilities. Appendix A to Part 380 is a checklist of minimum environmental filing requirements.

90. Currently, when a prospective applicant elects to undertake the Commission's voluntary pre-filing procedures, it is required to use or file, as appropriate, all of the above-described Part 380 materials as it formulates its project and then files the application with the Commission. The procedures require that prospective applicants required or requesting to use the pre-filing process file draft environmental material in accordance with the provisions of Part 380 of the regulations implementing the Commission's procedures under NEPA, as described above. This will allow the Commission to review the environmental materials and make suggestions on how they can be improved before the filing of the application.

91. Section 157.21(a)(3) requires that prospective applicants for LNG terminal facilities and any related jurisdictional gas facilities provide any necessary information for the environmental review. Information also may be required for facilities not subject to the Commission's NGA jurisdiction, such as intrastate pipeline and Hinshaw pipeline facilities that will be interconnected with the LNG terminal.

92. Section 157.21(b) also states that a prospective applicant approved to use the pre-filing procedures for facilities not related to LNG terminal facilities should not file an application until at least 180 days after the date that the Director issues a notice approving use of the pre-filing procedures. However, whereas a prospective applicant for LNG facilities would be precluded from filing an application before the 180-day period has ended, the regulations do not preclude a prospective applicant for facilities not related to LNG facilities from filing an application within 180 days.

93. Any prospective applicant required or potentially required to use the pre-filing process for LNG terminal facilities and related facilities or any prospective applicant requesting to use the pre-filing process for non-LNG related facilities is required by section 157.21(c) to first consult with the Director on the nature of the project, the content of the pre-filing request, and the status of the prospective applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (d) of this section. This consultation will also include discussion of the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project.

94. Section 157.21(d) identifies the information that a prospective applicant's initial filing to initiate the pre-filing process must include. For

[19] The CEQ's regulations are set at 40 CFR Parts 1500 through 1508 (2005).

LNG terminal facilities, the initial filing must include a description of the schedule desired for the project, including the expected application filing date and the desired date for Commission approval, and a description of the zoning and availability of the proposed site and marine facility location.

95. For natural gas facilities not related to LNG terminal facilities, section 157.21(d) provides that a prospective applicant's initial filing must include an explanation of why the prospective applicant wants to use the process, including any critical timing considerations, the expected application filing date and the desired date for Commission approval.

96. Filings by all prospective applicants to initiate the pre-filing process are required by section 157.21(d) to include:

- A detailed description of the project, including location maps and plot plans to scale showing all major plant components, that will serve as the initial discussion point for stakeholder review;
- A list of the relevant federal and state agencies in the project area with permitting requirements, and a statement indicating that those agencies are aware of the prospective applicant's intention to use the pre-filing process (including contact names and telephone numbers) and whether the agencies have agreed to participate in the process. For LNG terminal facilities, the list shall identify the agency designated by the governor of the state in which the project will be located to consult with the Commission regarding state and local safety considerations. The filing also shall describe how the applicant has accounted for agency schedules for issuance of federal authorizations and when the applicant proposes to file with these agencies for their respective permits or other authorizations;
- A list and description of the interest of other persons and organizations who have been contacted about the project (including contact names and telephone numbers);
- A description of what work has already been done, *e.g.*, contacting stakeholders, agency consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses. This description shall also include the identification of the environmental and engineering firms and sub-contractors under contract to develop the project.;
- For natural gas facilities other than LNG terminal facilities and related jurisdictional natural gas facilities, proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, or a proposal for the submission of an applicant-prepared draft Environmental Assessment as determined during the initial consultation described in paragraph (c) of this section;
- Acknowledgement that a complete Environmental Report and complete application are required at the time of filing;
- A description of a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including a project website and a single point of contact. This plan shall also describe how the applicant intends to respond to requests for information from federal and state permitting agencies, including, if applicable, the governor's designated agency for consultation regarding state and local safety considerations with respect to LNG facilities; and
- Certification that an LOI and Preliminary WSA have been submitted to the U. S. Coast Guard or, for modifications to an existing or approved LNG terminal, that the U. S. Coast Guard did not require such information.

97. Section 157.21(e) states that the pre-filing process for a prospective applicant will be deemed to have commenced on the date the Director issues a notice setting forth a finding that the prospective applicant has adequately addressed the requirements of section 157.21.[20] The date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process. Section 157.21(e) also provides for the Director to make determinations whether prospective modifications to an existing LNG terminal will involve significant state and local safety considerations that have not been previously addressed. Prospective applicants for such modifications to existing LNG facilities are required to undertake the pre-filing review process.

98. Existing section 375.308(z) describes the Director's delegated authority with respect to the collaborative pre-filing procedures in section 157.22. This Final Rule removes existing section 157.22 from the regulations since the Final Rule implements the pre-filing procedures and review provided for in new section 157.21. Therefore, the existing text in paragraph (z) of section 375.208 is replaced with new text which provides for the Director's issuance of notices to commence the pre-filing process under new section 157.21, after the Director has found that a prospective applicant has adequately addressed the above-described requirements. The new text in section 375.308(z) also provides for the Director to post guidance on the Commission's website to clarify the procedures and on how prospective applicants can achieve compliance with the pre-filing process and regulations.

99. Section 157.21(f) provides that, upon the Director's issuance of a notice commencing a prospective applicant's pre-filing process, the prospective applicant must:

- Within seven days[21] and after consultation with Commission staff, establish and notify Commission staff of the dates and locations at which the prospective applicant will conduct open houses and meetings with stakeholders (including agencies) and Commission staff.
- Within 14 days, conclude the contract with the selected third-party contractor.
- Within 14 days, contact all stakeholders not already informed about the project.
- Within 30 days, submit a stakeholder mailing list to Commission staff.
- Within 30 days, file a draft of Resource Report 1 in accordance with section 380.12(c) of the regulations and a summary of the alternatives considered or under consideration.
- On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency meetings.
- Be prepared to provide a description of the proposed project and to answer questions from the public at

[20] The Commission recognizes that there will be instances where prospective modifications to existing or approved LNG terminals will not involve significant state and local safety considerations that have not been previously addressed. Nevertheless, it generally will be necessary for prospective applicants to substantially comply with the requirements of subsections (a), (c) and (d) of section 157.21 in order for the Director to make a finding on whether prospective modifications will involve significant new or additional safety considerations. However, the Director will have discretion in determining whether the information supplied by a prospective applicant is adequate.

[21] As provided in Rule 2007 of the Commission's Rules of Practice and Procedure, 18 CFR 385.2007 (2005), the day on which the Director's notice is issued will be excluded in counting days for purposes of determining the date a filing is due. Further, if the due date for a filing would fall on a Saturday, Sunday, holiday, or day on which the Commission closes early due to adverse conditions, the following business day becomes the due date.

the scoping meetings held by Commission staff.

• Be prepared to attend site visits and other stakeholder and agency meetings arranged by the Commission staff, as required.

• Within 14 days of the end of the scoping comment period, respond to issues raised during scoping.

• Within 60 days of the end of the scoping comment period, file draft Resource Reports 1 through 12.

• At least 60 days prior to filing an application, file revised draft Resource Reports, if requested by Commission staff.

• At least 90 days prior to filing an application, file draft Resource Report 13 (for LNG terminal facilities).

• Certify that a Follow-on WSA will be submitted to the U. S. Coast Guard no later than the filing of an application with the Commission (for LNG terminal facilities and modifications thereto, if appropriate). If appropriate, the applicant shall certify that the U. S. Coast Guard has indicated that a Follow-On WSA is not required.

100. Section 157.21(g) provides that Commission staff and third-party contractor involvement during the pre-filing process will be designed to fit each project and will include some or all of the following:

• Assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners, agencies, and other interested parties).

• Issuing an environmental scoping notice and conducting scoping for the proposal.

• Facilitating issue identification and resolution.

• Conducting site visits, examining alternatives, meeting with agencies and stakeholders, and participating in the prospective applicant's public information meetings.

• Reviewing draft Resource Reports.

• Initiating the preparation of a preliminary EA or draft EIS, which may include cooperating agency review.

101. Paragraph (h) of section 157.21 provides that a prospective applicant using the pre-filing procedures shall comply with the procedures in section 388.112 of the regulations for the submission of documents containing CEII, as defined in § 388.113 of the regulations.

102. Once an application is accepted by the Commission, whether the environmental analysis can proceed will be highly dependent on how well the applicant responded to issues raised by Commission staff and the stakeholders during the pre-filing process described above.

III. Environmental Analysis

103. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.[22] No environmental consideration is raised by the promulgation of a rule that is procedural in nature or does not substantially change the effect of legislation or regulations being amended.[23]

104. The Final Rule establishes pre-filing review procedures which are mandatory for prospective applicants for new LNG terminal facilities, certain modifications to existing or approved LNG terminals and related jurisdictional gas facilities. The Final Rule's pre-filing procedures are elective for prospective applicants for natural gas facilities not related to LNG terminals. In neither case do the procedures substantially change the regulatory requirements to which applications for such facilities are subject. Rather, the Final Rule will result in certain regulatory requirements being satisfied prior to the filing of an application, as opposed to being satisfied at the time, or after the filing, of the application. The use of the procedures generally will affect the timing of the filing of applications, not when regulatory requirements are met. Further, the Final Rule implements regulatory changes mandated by Congress in EPAct 2005 for new LNG terminals.

IV. Regulatory Flexibility Act Statement

105. The Regulatory Flexibility Act of 1980 (RFA)[24] generally requires a description and analysis of proposed regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect. Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as ''a small entity'' if it has annual revenues of $6 million or less.

106. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[25] Based on the Commission's experience using the proposed pre-filing procedures, they will only be used for major construction projects. Most, if not all, LNG-related projects subject to mandatory pre-filing review would be projects costing millions of dollars. Most, if not all, non-LNG related projects for which prospective applicants will elect to use the proposed pre-filing procedures will be projects costing millions of dollars. Because of the scale and nature of projects likely to be reviewed under the pre-filing procedures, the Commission doubts that any existing or new company using the pre-filing procedures will be a small entity under the RFA's standards. In addition, the RFA directs agencies to consider four regulatory alternatives in a rulemaking to lessen the impact on small entities: (1) Tiering or establishment of different compliance or reporting requirements; (2) classification, consolidation, clarification or simplification of compliance and reporting requirements; (3) performance rather than design standards; and (4) exemptions. In this Final Rule the Commission has adopted an alternative by delegating to the OEP Director authority with the discretion to grant waivers and make modifications as appropriate for the use of pre-filing procedures as in section 157.21.

107. Accordingly, the Commission hereby certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. FERC–537, ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment,'' identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under section 7 of the NGA is required.

V. Information Collection Statement

108. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.[26] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.[27] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Interim OMB approval of the information collections contained in the NOPR was received on September 26, 2005 in response to the Commission's

[22] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[23] 18 CFR 380.4(a)(2)(ii) (2005).

[24] 5 U.S.C. 601–612.

[25] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently-owned and operated and which is not dominant in its field of operation.

[26] 5 CFR 1320.11 (2005).

[27] 44 U.S.C. 3507(d) (2005).

request for OMB review under emergency clearance procedures. The requirements in the subject rulemaking will be submitted to OMB for review and final approval.

109. The Final Rule will affect the following existing information collections:

110. FERC–539, ''Gas Pipeline Certificates: Import/Export Related,'' identifies the Commission's information collections relating to Part 153 of its regulations, which apply to facilities to import or export natural gas and for which authorization under section of the NGA is necessary. FERC–537, ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment,'' identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under section 7 of the NGA is required.

111. FERC–577, ''Gas Pipeline Certificates: Environmental Impact Statement,'' identifies the Commission's information collections relating to Part 380 implementing NEPA requirements relating to the construction of natural gas facilities.

112. Interested persons may obtain information on the reporting requirements or submit comments on the collections of information and the associated burden estimates including suggestions for reducing this burden by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415 or e-mail *michael.miller@ferc.gov*.) Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285 or e-mail: *oira_submission@omb.eop.gov*.)

113. Public Reporting Burden: The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

114. The burden estimates for complying with the additional filing requirements contained in this rule pursuant to the procedures in new section 157.21 are set forth below. As reflected, the burden estimates are higher for a respondent/prospective applicant for LNG terminal facilities than for a respondent/prospective applicant for other natural gas facilities.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–537	10	1	47	470
FERC–539	10	1	103	1,030
FERC–577	20	1	1,402	28,040
Totals				29,540

115. From these burden estimates there must be subtracted the original data collection requirements in OMB's record relating to section 157.22 which this rulemaking proposes to remove from the Commission's regulations. The numbers in OMB's record for section 157.22 are:

FERC–537	13,230 hours
FERC–539	270 hours
FERC–577	13,580 hours

116. When the burden estimates for proposed section 157.21 are reduced to reflect the removal of section 157.22, the net data collection estimates for this rule are:

FERC–537	12,760 hours
FERC–539	760 hours
FERC–577	14,460 hours
Total	[1] 2,460 hours

[1] Net increase.

Total Annual Hours for Collection: 2,460 hours. For LNG terminal facilities and LNG-related pipeline facilities, these are mandatory information collection requirements. For non-LNG related natural gas facilities, these information collection requirements are voluntary but are still subject to OMB review.

Information Collection Costs: The Commission sought comments on the cost to comply with these requirements. No comments were received. The Commission has projected the average annualized cost for all respondents to be $4,920,000 (2,460 hours × $100.00 per hour × 20 respondents).

Title: FERC–537 ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment''; FERC–539, ''Gas Pipeline Certificates: Import/Export Related''; FERC–577, ''Gas Pipeline Certificates: Environmental Impact Statement.''

Action: Proposed Information Collection.

OMB Control Nos.: 1902–0060 (FERC–537); 1902–0062 (FERC–539); 1902–0128 (FERC–577).

The applicant shall not be penalized for failure to respond to these collections of information unless the collections of information display valid OMB control numbers.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: On August 8, 2005, Congress enacted EPAct 2005. Section 311(d) of EPAct 2005 amends the NGA to insert a new section, section 3A, which requires that the Commission shall promulgate regulations on the pre-filing process for LNG terminals within 60 days from enactment of EPAct 2005. Congress and the Commission consider the promulgation of these regulations to be a matter of critical importance to the state and local safety concerns regarding the construction and development of LNG terminals. The Commission must issue a final rule by October 7, 2005. The Commission seeks emergency processing of this proposed information collection because the use of normal clearance procedures is reasonably likely to cause a statutory ordered deadline to be missed. The Final Rule revises the requirements contained in 18 CFR Parts 157 and 153 to add a requirement that applicants for authorization to construct LNG terminals must comply with a pre-filing process and that such process must commence at least 6 months prior to the filing of any application with the Commission for authorization to construct such facilities.

VI. Document Availability

117. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington DC 20426.

118. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

119. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date

120. These regulations are effective November 17, 2005.

121. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, received on October 4, 2005, that this Final Rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[28] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[29]

List of Subjects

CFR Part 153

Exports; Imports; Natural gas; Reporting and recordkeeping requirements.

CFR Part 157

Administrative practice and procedure; Natural gas; Reporting and recordkeeping requirements.

CFR Part 375

Authority delegations (Government agencies; Seals and insignia; Sunshine Act.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission proposes to amend Parts 153, 157 and 375 of Chapter I, Title 18, Code of Federal Regulations, as follows:

[28] 5 U.S.C. 804(2) (2005).

[29] 5 U.S.C. 801(a)(A) (2005).

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for Part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

■ 2. In § 153.2, new paragraphs (d), (e) and (f) are added, to read as follows:

§ 153.2 Definitions.

* * * * *

(d) LNG Terminal means all natural gas facilities located onshore or in state waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by a waterborne vessel, but does not include:

(1) Waterborne vessels used to deliver natural gas to or from any such facility; or

(2) Any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act.

(e) For purposes of this part and § 157.21, *related jurisdictional natural gas facilities* means any pipeline or other natural gas facilities which are subject to section 7 of the NGA; will directly interconnect with the facilities of an LNG terminal, as defined in paragraph (d) of this section; and which are necessary to transport gas to or regasified LNG from:

(1) A planned but not yet authorized LNG terminal; or

(2) An existing or authorized LNG terminal for which prospective modifications are subject pursuant to section 157.21(e)(2) to a mandatory pre-filing process.

(f) Waterway Suitability Assessment (WSA) means a document used by the U.S. Coast Guard in assessing the suitability of a waterway for LNG marine traffic pursuant to 33 CFR 127.007. The Preliminary WSA initiates the process of analyzing the safety and security risks posed by proposed LNG tanker operations to a port and waterways, and the Follow-On WSA provides a detailed analysis of the same issues.

■ 3. In § 153.6, a new paragraph (c) is added, to read as follows:

§ 153.6 Time of filing.

* * * * *

(c) When a prospective applicant for authorization for LNG terminal facilities, related jurisdictional natural gas facilities or modifications to existing LNG terminal facilities is required by § 157.21(a) to comply with that section's pre-filing procedures, no application for such authorization may be made before 180 days after the date of issuance of the notice by the Director of the Office of Energy Projects, as provided in § 157.21(e), of the commencement of the prospective applicant's pre-filing process under § 157.21.

■ 4. The title and text of § 153.12 are revised to read as follows:

§ 153.12 Pre-filing procedures for applications for authorization to site, construct, maintain, connect or modify facilities to be used for the export or import of natural gas.

The definitions in § 157.1 and the pre-filing procedures in § 157.21 of this chapter are applicable to applications under section 3 of the Natural Gas Act filed pursuant to subpart B of this part.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 5. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352.

■ 6. In § 157.1, add the definition for ''Director'' in alphabetical order to read as follows:

§ 157.1 Definitions.

* * * * *

For the purposes of § 157.21 of this part, *Director* means the Director of the Commission's Office of Energy Projects.

■ 7. Section 157.21 is added, to read as follows:

§ 157.21 Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications.

(a) *LNG terminal facilities and related jurisdictional natural gas facilities.* A prospective applicant for authorization to site, construct and operate facilities included within the definition of ''LNG terminal,'' as defined in § 153.2(d), and any prospective applicant for related jurisdictional natural gas facilities must comply with this section's pre-filing procedures and review process. These mandatory pre-filing procedures also shall apply when the Director finds in accordance with paragraph (e)(2) of this section that prospective modifications

to an existing LNG terminal are modifications that involve significant state and local safety considerations that have not been previously addressed. Examples of such modifications include, but are not limited to, the addition of LNG storage tanks; increasing throughput requiring additional tanker arrivals or the use of larger vessels; or changing the purpose of the facility from peaking to base load. When a prospective applicant is required by this paragraph to comply with this section's pre-filing procedures:

(1) The prospective applicant must make a filing containing the material identified in paragraph (d) of this section and concurrently file a Letter of Intent pursuant to 33 U.S.C. 127.007, and a Preliminary Waterway Suitability Assessment (WSA) with the U.S. Coast Guard (Captain of the Port/Federal Maritime Security Coordinator). The latest information concerning the documents to be filed with the Coast Guard should be requested from the U.S. Coast Guard. For modifications to an existing or approved LNG terminal, this requirement can be satisfied by the prospective applicant's certifying that the U.S. Coast Guard did not require such information.

(2) An application:

(i) Shall not be filed until at least 180 days after the date that the Director issues notice pursuant to paragraph (e) of this section of the commencement of the prospective applicant's pre-filing process; and

(ii) Shall contain all the information specified by the Commission staff after reviewing the draft materials filed by the prospective applicant during the pre-filing process, including required environmental material in accordance with the provisions of part 380 of this chapter, ''Regulations Implementing the National Environmental Policy Act.''

(3) The prospective applicant must provide sufficient information for the pre-filing review of any pipeline or other natural gas facilities, including facilities not subject to the Commission's Natural Gas Act jurisdiction, which are necessary to transport regassified LNG from the subject LNG terminal facilities to the existing natural gas pipeline infrastructure.

(b) *Other natural gas facilities.* When a prospective applicant for authorization for natural gas facilities is not required by paragraph (a) of this section to comply with this section's pre-filing procedures, the prospective applicant may file a request seeking approval to use the pre-filing procedures.

(1) A request to use the pre-filing procedures must contain the material identified in paragraph (d) of this section unless otherwise specified by the Director as a result of the Initial Consultation required pursuant to paragraph (c) of this subsection; and

(2) If a prospective applicant for non-LNG terminal facilities is approved to use this section's pre-filing procedures:

(i) The application will normally not be filed until at least 180 days after the date that the Director issues notice pursuant to paragraph (e)(3) of this section approving the prospective applicant's request to use the pre-filing procedures under this section and commencing the prospective applicant's pre-filing process. However, a prospective applicant approved by the Director pursuant to paragraph (e)(3) of this section to undertake the pre-filing process is not prohibited from filing an application at an earlier date, if necessary; and

(ii) The application shall contain all the information specified by the Commission staff after reviewing the draft materials filed by the prospective applicant during the pre-filing process, including required environmental material in accordance with the provisions of part 380 of this chapter, ''Regulations Implementing the National Environmental Policy Act.''

(c) *Initial consultation.* A prospective applicant required or potentially required or requesting to use the pre-filing process must first consult with the Director on the nature of the project, the content of the pre-filing request, and the status of the prospective applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (d) of this section. This consultation will also include discussion of the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project, and whether a third-party contractor is likely to be needed for the project.

(d) *Contents of the initial filing.* A prospective applicant's initial filing pursuant to paragraph (a)(1) of the section for LNG terminal facilities and related jurisdictional natural gas facilities or paragraph (b)(1) of this section for other natural gas facilities shall include the following information:

(1) A description of the schedule desired for the project including the expected application filing date and the desired date for Commission approval.

(2) For LNG terminal facilities, a description of the zoning and availability of the proposed site and marine facility location.

(3) For natural gas facilities other than LNG terminal facilities and related jurisdictional natural gas facilities, an explanation of why the prospective applicant is requesting to use the pre-filing process under this section.

(4) A detailed description of the project, including location maps and plot plans to scale showing all major plant components, that will serve as the initial discussion point for stakeholder review.

(5) A list of the relevant federal and state agencies in the project area with permitting requirements. For LNG terminal facilities, the list shall identify the agency designated by the governor of the state in which the project will be located to consult with the Commission regarding state and local safety considerations. The filing shall include a statement indicating:

(i) That those agencies are aware of the prospective applicant's intention to use the pre-filing process (including contact names and telephone numbers);

(ii) Whether the agencies have agreed to participate in the process;

(iii) How the applicant has accounted for agency schedules for issuance of federal authorizations; and

(iv) When the applicant proposes to file with these agencies for their respective permits or other authorizations.

(6) A list and description of the interest of other persons and organizations who have been contacted about the project (including contact names and telephone numbers).

(7) A description of what work has already been done, *e.g.*, contacting stakeholders, agency consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses. This description shall also include the identification of the environmental and engineering firms and sub-contractors under contract to develop the project.

(8) For LNG terminal projects, proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document.

(9) For natural gas facilities other than LNG terminal facilities and related jurisdictional natural gas facilities, proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, or a proposal for the submission of an applicant-prepared draft Environmental Assessment as determined during the

initial consultation described in paragraph (c) of this section.

(10) Acknowledgement that a complete Environmental Report and complete application are required at the time of filing.

(11) A description of a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including a project website and a single point of contact. This plan shall also describe how the applicant intends to respond to requests for information from federal and state permitting agencies, including, if applicable, the governor's designated agency for consultation regarding state and local safety considerations with respect to LNG facilities.

(12) Certification that a Letter of Intent and a Preliminary WSA have been submitted to the U.S. Coast Guard or, for modifications to an existing or approved LNG terminal, that the U.S. Coast Guard did not require such information.

(e) *Director's notices.* (1) When the Director finds that a prospective applicant for authority to site and construct a new LNG terminal has adequately addressed the requirements of paragraphs (a), (c) and (d) of this section, the Director shall issue a notice of such finding. Such notice shall designate the third-party contractor. The pre-filing process shall be deemed to have commenced on the date of the Director's notice, and the date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(2) When the Director finds that a prospective applicant for authority to make modifications to an existing or approved LNG terminal has adequately addressed the requirements of paragraphs (a), (c) and (d) of this section, the Director shall issue a notice making a determination whether prospective modifications to an existing LNG terminal shall be subject to this section's pre-filing procedures and review process. Such notice shall designate the third-party contractor, if appropriate. If the Director determines that the prospective modifications are significant modifications that involve state and local safety considerations, the Director's notice will state that the pre-filing procedures shall apply, and the pre-filing process shall be deemed to have commenced on the date of the Director's notice in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(3) When a prospective applicant requests to use this section's pre-filing procedures and review for facilities not potentially subject to this section's mandatory requirements, the Director shall issue a notice approving or disapproving use of the pre-filing procedures of this section and determining whether the prospective applicant has adequately addressed the requirements of paragraphs (b), (c) and (d) of this section. Such notice shall designate the third-party contractor, if appropriate. The pre-filing process shall be deemed to have commenced on the date of the Director's notice, and the date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(f) Upon the Director's issuance of a notice commencing a prospective applicant's pre-filing process, the prospective applicant must:

(1) Within seven days and after consultation with Commission staff, establish the dates and locations at which the prospective applicant will conduct open houses and meetings with stakeholders (including agencies) and Commission staff.

(2) Within 14 days, conclude the contract with the selected third-party contractor.

(3) Within 14 days, contact all stakeholders not already informed about the project, including all affected landowners as defined in paragraph § 157.6(d)(2) of this section.

(4) Within 30 days, submit a stakeholder mailing list to Commission staff.

(5) Within 30 days, file a draft of Resource Report 1, in accordance with § 380.12(c), and a summary of the alternatives considered or under consideration.

(6) On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency meetings.

(7) Be prepared to provide a description of the proposed project and to answer questions from the public at the scoping meetings held by OEP staff.

(8) Be prepared to attend site visits and other stakeholder and agency meetings arranged by the Commission staff, as required.

(9) Within 14 days of the end of the scoping comment period, respond to issues raised during scoping.

(10) Within 60 days of the end of the scoping comment period, file draft Resource Reports 1 through 12.

(11) At least 60 days prior to filing an application, file revised draft Resource Reports 1 through 12, if requested by Commission staff.

(12) At least 90 days prior to filing an application, file draft Resource Report 13 (for LNG terminal facilities).

(13) Certify that a Follow-on WSA will be submitted to the U.S. Coast Guard no later than the filing of an application with the Commission (for LNG terminal facilities and modifications thereto, if appropriate). The applicant shall certify that the U.S. Coast Guard has indicated that a Follow-On WSA is not required, if appropriate.

(g) Commission staff and third-party contractor involvement during the pre-filing process will be designed to fit each project and will include some or all of the following:

(1) Assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners, agencies, and other interested parties).

(2) Issuing an environmental scoping notice and conducting such scoping for the proposal.

(3) Facilitating issue identification and resolution.

(4) Conducting site visits, examining alternatives, meeting with agencies and stakeholders, and participating in the prospective applicant's public information meetings.

(5) Reviewing draft Resource Reports.

(6) Initiating the preparation of a preliminary Environmental Assessment or Draft Environmental Impact Statement, the preparation of which may involve cooperating agency review.

(h) A prospective applicant using the pre-filing procedures of this section shall comply with the procedures in § 388.112 for the submission of documents containing critical energy infrastructure information, as defined in § 388.113.

§ 157.22 [Removed]

■ 8. Section 157.22 is removed in its entirety.

PART 375—THE COMMISSION

■ 9. The Authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–1 3432; 16 U.S.C. 791–825r, 2601–2645; U.S.C. 7101–7352.

■ 10. In § 375.308, paragraph (z) is revised to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(z) Approve, on a case-specific basis, and make such decisions and issue guidance as may be necessary in

connection with the use of the pre-filing procedures in § 157.21, '' Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications.''

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Commenters

Trunkline LNG Company, L.L.C.
Center for Liquified Natural Gas
El Paso Corporation Pipeline Group
Broadwater Energy
Woodside Natural Gas, Inc.
BP Energy Company
Williston Basin Interstate Pipeline Company
Exxon Mobil Corporation
Cheniere LNG, Inc.
Public Utilities Commission of the State of California
Dominion Cove Point LNG, LP
California Energy Commission
Distrigas of Massachusetts LLC
National Association of Regulatory Utility Commissioners
Sempra Global
North Baja Pipeline, LLC
State of Maine, Office of the Governor
Maryland Conservation Council
Duke Energy Gas Transmission
Nisource Pipelines
Interstate Natural Gas Association of America (INGAA)
Downeast LNG, Inc.
Keyspan LNG, L.P.
American Gas Association

[FR Doc. 05–20653 Filed 10–17–05; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7985–2]

RIN 2060–AN13

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide for the 2005 Supplemental Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comments, we are withdrawing the direct final rule on the supplemental authorization of methyl bromide for critical uses in 2005, published in the **Federal Register** on August 30, 2005 (70 FR 51270). We stated in the direct final rule that if we received adverse comment by September 29, 2005, we would publish a timely withdrawal in the **Federal Register**. We received adverse comment on the direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on August 30, 2005 (70 FR 51317). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of October 18, 2005, EPA withdraws the direct final rule published at 70 FR 51270, on August 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR 2004–0506. 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 Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this action, contact Marta Montoro by telephone at (202) 343–9321, or by e-mail at *mebr.allocation@epa.gov*, or by mail at Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division, (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L St., NW., Washington, DC 20005, Attn: Marta Montoro. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: On August 30, 2005, we published a direct final rule (70 FR 51270) and parallel proposal (70 FR 51317) supplementing the critical stock allowances (CSAs) previously allocated for 2005, as published in the **Federal Register** on December 23, 2004 (69 FR 76982), and amending the list of approved critical uses. EPA exempted methyl bromide for critical uses beyond the phaseout under the authority of the Clean Air Act and in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer. The preamble to the direct final rule stated that if we received adverse comment by September 29, 2005, we would publish a timely notice of withdrawal in the **Federal Register.** EPA received adverse comment on the direct final rule. Accordingly, we are withdrawing the direct final rule as of October 18, 2005. EPA will take final action on the parallel proposal after considering the comments received. As stated in the parallel proposal, EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Methyl Bromide, Ozone, Reporting and recordkeeping requirements, Treaties.

Dated: October 11, 2005.

William L. Wehrum,

Acting Assistant Administrator for the Office of Air and Radiation.

[FR Doc. 05–20813 Filed 10–17–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[DHS–2005–0051]

RIN 1660–AA44

44 CFR Part 206

Special Community Disaster Loans Program

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the Special Community Disaster Loans Program authorized in the Community Disaster Loan Act of 2005 (2005 Act). This interim rule describes the procedures and requirements for a program designed to provide loans for essential services to local governments that have experienced a loss in revenue due to a major disaster. These regulations do not apply to the traditional Community Disaster Loans Program which is permanently authorized.

DATES: *Effective:* This rule is effective October 18, 2005. Comments: Comments are due on or before December 19, 2005.

ADDRESSES: You may submit comments, identified by Docket DHS–2005–0051, Special Community Disaster Loans

Program, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *FEMA-rules@dhs.gov*. Include Docket DHS–2005–0051, Special Community Disaster Loans Program in the subject line of the message.
- Facsimile: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, (fax) 202–646–4536. Include Docket DHS–2005–0051, Special Community Disaster Loans Program, in the subject line of the message.
- Mail or Hand Delivery/Courier: For paper, disk, or CD–ROM submissions, Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW., Washington, DC 20472. Include Docket DHS–2005–0051, Special Community Disaster Loans Program, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: James A. Walke, FEMA, 500 C Street, SW., Washington, DC 20472, or call (202) 646–2751, or e-mail *james.walke@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. FEMA also invites comments that relate to the economic, environmental, or federalism affects that might result from this interim rule. Comments that will provide the most assistance to FEMA in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

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.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

Background

This interim rule implements the Community Disaster Loan Act of 2005, Pub. L. 109–88. The 2005 Act authorizes FEMA to transfer $750 million from the funds appropriated in the Second Emergency Supplemental Appropriations Act To Meet Immediate Needs Arising From The Consequences Of Hurricane Katrina, 2005, Pub. L. 109–62, to provide up to $1 billion in loan authority. For loans issued pursuant to the 2005 Act, the 2005 Act adds three elements to the traditional program under section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5184: (1) The 2005 Act removes the $5 million limit on individual loans; (2) the 2005 Act specifies that the loans are ''to assist local governments in providing essential services;'' and (3) the 2005 Act makes inapplicable the loan cancellation provision of section 417(c)(1) of the Stafford Act.

In determining what constitutes ''essential services,'' it is presumed that in light of the limited resources available to the governments impacted by major disasters whose revenue losses make them eligible for this program, proceeds from these loans will be limited to the performance of core municipal operating functions including police and fire protection, trash collection, school operation, revenue collection, and other services related to protecting and promoting the health, safety, and public welfare of the community.

Under section 417 of the Stafford Act (42 U.S.C. 5184), loans may be provided to ''local governments.'' Section 102 of the Stafford Act (42 U.S.C. 5122) broadly defines ''local government'' to mean a county; municipality; city; town; township; local public authority; school district; special district; intrastate district; council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law); regional or interstate government entity or agency or instrumentality of a local government; an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State. 42 U.S.C. 5122(6); 44 CFR 206.2(a)(16). This broad definition covers entities having an executive, administrative, legislative, or judicial nature. It may include school districts, sheriffs' offices, judicial bodies, district attorney offices, district courts, and water and sewage authorities.

Operators of private nonprofit facilities are not eligible for Special Community Disaster Loans as they do not meet the definition of local government under the Stafford Act. However, if a local government deems it appropriate, it may provide proceeds from a loan under this Program to an operator of a private nonprofit facility that provides the community essential services, such as a volunteer fire department, volunteer emergency medical provider, or a hospital. For example, it may provide loan proceeds to a volunteer fire department in the community for expenses not otherwise available under the Stafford Act or other Federal sources that would be necessary for the Fire Department to continue to carry out their essential services to the community. Further, if the local government provides loan proceeds to the private nonprofit, the local government will be solely responsible for repayment of the loan and for fulfillment of all conditions of these regulations, which include the loan application and the promissory note.

This interim rule takes effect immediately in order to allow FEMA to provide these loans as soon as possible to the local governments already impacted by Hurricanes Rita and Katrina, as Congress anticipated in the speedy passage of the Act. However, FEMA still seeks comments on this rule, especially from local governments who are applying for Special Community Disaster Loans, or from local governments that are considering applying for Special Community Disaster Loans, as well as citizens of these communities. Because of the desire to provide assistance rapidly and because much of the financial information required for the traditional Community Disaster Loans Program is to determine cancellation eligibility, which does not apply to the Special Community Disaster Loans Program, FEMA has attempted to streamline the financial and other information requirements that local governments need to provide to apply for a loan. For example, FEMA recognizes that Hurricanes Katrina and Rita may have damaged or destroyed many of the records of applicants. Therefore, if FEMA finds that the applicant cannot provide any specific application requirements, FEMA may waive the requirement to provide certain information if it is consistent with congressional intent to expedite assistance while still maintaining appropriate accountability for Federal funds.

FEMA is also aware of its responsibility to the taxpayers to ensure that this program is operated with the appropriate level of accountability. Therefore, FEMA particularly welcomes comments on whether this interim rule effectively strikes the balance of providing administrative flexibility to local governments while safeguarding taxpayer resources.

Administrative Procedure Act

In general, FEMA publishes a rule for public comment before issuing a final rule under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that procedure for good cause. The public benefit of this rule is the ability to issue loans under the Community Disaster Loan Act of 2005, Pub. L. 109–88, to assist local governments that have experienced a loss in revenue due to a major disaster so that those governments can provide essential municipal services. There is an immediate need for local governments impacted by Hurricanes Katrina and Rita to provide essential services to their citizens. Any delay in distributing these loans pending completion of notice and comment and publication of a final rule could have a severe impact on the health, safety, and welfare of the citizens of the affected local governments.

In accordance with 5 U.S.C. 553(d)(3), FEMA has determined that delaying implementation of this rule to await public notice and comment is unnecessary, impracticable, and contrary to the public interest. Delay is not in the public interest and is impracticable because of the immediate need for local governments impacted by Hurricanes Katrina and Rita to provide essential services to their citizens. FEMA also finds good cause, under 5 U.S.C. 553(d)(3), for this interim rule to take effect immediately. It would be impracticable and contrary to the public interest to subject this interim rule to prior notice and public comment, or to delay its taking effect.

Although FEMA has good cause to publish this rule without prior notice and comment, FEMA values public comments. As a result, FEMA is soliciting public comments on this interim rule and may revise the final rule in response to those comments. In particular FEMA invites comments from local governments who are applying for Special Community Disaster Loans, or considering doing so, as well as citizens of these communities.

Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a ''significant regulatory action'' is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive 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 may 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.

This rulemaking is considered to be an economically significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, it has been reviewed by the Office of Management and Budget.

The requirements of this interim rule apply only to the Special Community Disaster Loans under the Community Disaster Loan Act of 2005, Pub. L. 109–88. Community Disaster Loans issued prior to the enactment of Pub. L. 109–88 or other loans not issued under the authority of the Pub. L. 109–88 are not covered under the regulations. Consequently, this interim rule will not impose any additional requirements on local governments that are not requesting a Special Community Disaster Loan.

Historically, FEMA has only provided an average of about $8 million per year in Community Disaster Loans ($233 million in the last 29 years), and no loans have been issued since Fiscal Year 1999. Only in one previous year has FEMA provided Community Disaster Loans that exceeded $100 million. FEMA believes that this rule is economically significant as Congress has authorized $1 billion in new loan authority and lifted the $5 million limit on individual loans. The devastating impact of Hurricanes Katrina and Rita make it very possible that more than $100 million in Special Community Disaster Loans could be made within the next year.

Further, the 2005 Act does not provide for loan cancellation, which is allowed under the traditional Community Disaster Loans Program. The term of a Special Community Disaster Loan is five years, unless extended by FEMA. FEMA may consider requests for an extension based on the financial condition of the local government. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed ten years, but in extenuating circumstances involving financial hardship, the local government may request from FEMA an additional period beyond ten years to repay the indebtedness.

FEMA will also have discretion to allow localities facing unique economic hardships to receive discounted interest rates, at levels consistent with the lowest rate offered by the Small Business Administration's disaster loan program. In addition, Special Community Disaster Loans will require either the State to co-sign the Promissory Note, or if the State declines to cosign the Promissory Note or cannot legally do so, the local government must pledge collateral security to cover the principal amount of the Note. In the event of default on the loan by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 * * *, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for interpretative rule involving the internal revenue laws of the United States * * *.'' 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

Unfunded Mandates Reform Act of 1995

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 Unfunded Mandates Reform 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. The Unfunded Mandates Reform Act does not require an assessment in the case of an interim rule issued without prior notice and public comment. Nevertheless, FEMA does not expect this rule to result in such an expenditure. FEMA discusses this rule's effects elsewhere in this preamble.

Executive Order 13132, Federalism

This interim 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. It will not preempt any State laws. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

National Environmental Policy Act

This interim rule falls within the exclusion category of 44 CFR 10.8 (d)(2)(ii), which addresses the preparation, revision, adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this interim rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Paperwork Reduction Act of 1995

This interim rule will revise information collection requirements currently approved under the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number.

FEMA submitted an information collection request to the OMB for review and clearance in accordance with the review procedures of the Paperwork Reduction Act of 1995. OMB approved the requested revision of this information collection, which is assigned OMB control number 1660–0083 and expires on April 30, 2006.

List of Subjects in 44 CFR Part 206

Disaster Assistance, Community Disaster Loans, Loan Programs.

■ Accordingly, for the reasons set forth in the preamble, amend part 206 of Chapter I of title 44 of the Code of Federal Regulations as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

■ 1. The authority citation for part 206 continues to read:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 2. Amend the subpart K of the Section Contents of part 206, by adding the following in proper numerical order:

Subpart K—Community Disaster Loans

Sec.

* * *

206.368–206.369 [Reserved]
206.370 Purpose and scope.
206.371 Loan program.
206.372 Responsibilities.
206.373 Eligibility criteria.
206.374 Loan application.
206.375 Loan administration.
206.376 [Reserved]
206.377 Loan repayment.
206.378–206.389 [Reserved]

■ 3. Revise § 206.360 to read as follows:

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Stafford Act. Sections 206.360 through 206.367 of the subpart do not implement the Community Disaster Loan Act of 2005. (see § 206.370).

■ 4. Add § 206.370 through 206.377 as follows:

§ 206.370 Purpose and scope.

(a) Purpose. Sections 206.370 through 206.377 provide policies and procedures for local governments and State and Federal officials concerning the Special Community Disaster Loans program under section 417 of the Stafford Act and the Community Disaster Loan Act of 2005, Public Law 109–88.

(b) Scope. Sections 206.370 through 206.377 apply only to Special Community Disaster Loans under the Community Disaster Loan Act of 2005, Public Law 109–88. Community Disaster Loans issued prior to the enactment of Public Law 109–88 or other subsequent loans not issued under the authority of the Public Law 109–88 are not covered under §§ 206.370 through 206.377.

§ 206.371 Loan program.

(a) *General.* The Associate Director may make a Special Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to provide essential services.

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States. If an applicant can demonstrate *unusual circumstances involving financial hardship*, the Associate Director may approve a rate equal to the five year maturity rate plus 1 per centum, adjusted to the nearest ⅛ percent, and further reduced by one-half.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider a request for an extension of a loan based on the local government's financial condition. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment (see § 206.377(c)).

(f) *Use of loan funds.* The local government shall use the loaned funds

to assist in providing essential services. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. The loan may not be used as the nonfederal share of any Federal program, including those under the Stafford Act.

(g) *Relation to other assistance.* Any Special Community Disaster Loans made under this program shall not reduce or otherwise affect any commitments, grants, or other assistance under the Stafford Act or part 206 of this title.

§ 206.372 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note, and §§206.370 through §§206.377. The local government shall send all loan application, loan administration, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the FEMA Associate Director.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests resulting from major disasters.

(c) The Regional Director or designee shall review each loan application received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director.

(f) The FEMA Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.373 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Special Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform essential governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential services to the community. Eligibility for other assistance under the Stafford Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, and it must demonstrate a need for financial assistance in order to provide essential municipal services. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform essential governmental functions. The criteria used in making this determination may include some or all of the following factors:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Displacement of revenue-producing business due to property destruction;

(vii) Necessity to reduce or eliminate essential services; and

(viii) Danger of municipal insolvency.

§ 206.374 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Special Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.377(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission. The GAR may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating

budget (see paragraph (b)(2) of this section) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, and certification and assurances requested by the Associate Director.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must, unless impracticable, accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Special Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinances, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Revenue and assessment information.* The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due.

(5) *Estimated disaster-related expense.* Unreimbursed disaster-related expenses of a municipal operating character should be estimated.

(c) *Federal review.* (1) The Associate Director or designee shall approve a Special Community Disaster Loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance as the result of the disaster to provide essential municipal services.

(2) *Resubmission of application.* If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be submitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Special Community Disaster Loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see paragraph (d)(2)(ii) of this section). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(e) *Waiver of requirements.* Notwithstanding any other provision of this or other sections promulgated pursuant to Public Law 109–88, the Associate Director may, upon the request of an applicant or loan recipient, waive any specific application requirement or financial reporting requirement (see, e.g., § 206.375(a)(2)) upon a finding by the Associate Director that the effects of the major disaster prevent the applicant from fulfilling the application requirement and that waiving the requirements would be consistent with the purposes of the Community Disaster Loan Act of 2005.

§ 206.375 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds.

(b) *Financial management.* (1) Each local government with an approved Special Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, the Department of Homeland Security Inspector General, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under §§ 206.370 through 206.377.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) FEMA will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) FEMA shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the loan program, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA.

§ 206.376 [Reserved]

§ 206.377 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by FEMA or FEMA's designated Disbursing Agency.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: I = P X R X T, where I = the amount of simple interest, P = the principal amount disbursed; R = the interest rate of the loan; and, T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest for up to five years. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original principal plus related interest less any payments made.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate. A reduced rate may not be applied if was it was not previously applied to the loan.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§ § 206.378—206.389 [Reserved]

Dated: October 14, 2005.

R. David Paulison,

Acting Director, Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 05–20920 Filed 10–17–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041110317–4364–02; I.D. 053105F]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces that it has approved the request of the State of New Jersey to transfer 36,333 lb (16,481 kg) of commercial summer flounder quota to the states of Maine, Connecticut, and New York, and the Commonwealth of Massachusetts, in accordance with the Atlantic States Marine Fisheries Commission (ASMFC) Addendum XV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective October 13, 2005 through December 31, 2005, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mike Ruccio, Fishery Management Specialist, (978) 281–9104, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The ASMFC adopted Addendum XV to the FMP in November 2004. The Addendum is being implemented under the adaptive management and framework procedures that are part of the FMP. Addendum XV establishes a program, for 2005 and 2006, that allocates the increase in commercial summer flounder quota (from the 2004 amount) differently than the existing allocation scheme, in order to reduce the amount of fish that must be discarded as bycatch in the commercial fishery in states with relatively low summer flounder quotas. The transfer of quota from donor states will allow recipient states to marginally increase trip limits, thereby decreasing the amount of summer flounder discarded at sea.

The final rule implementing Amendment 5 to the FMP (December 17, 1993; 58 FR 65936) provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations. The Regional Administrator has reviewed those criteria and approved the quota transfer requests submitted by the State of New Jersey.

Consistent with Addendum XV, New Jersey, a designated ''donor state,'' has voluntarily employed the quota transfer provisions of the FMP to transfer a total of 36,333 lb (16,481 kg) to be allocated as follows: Maine 999 lb (453 kg); Massachusetts 10,957 lb (4,970 kg); Connecticut 13,965 lb (6,335 kg); and New York 10,412 lb (4,723 kg)(see Table 1).

TABLE 1. SUMMER FLOUNDER COMMERCIAL QUOTA TRANSFERS

State	Amount Transferred		2005 Quota[1]		2005 Revised Quota	
	lb	kg	lb	kg	lb	kg
New Jersey	-36,333	-16,481	3,005,481	1,363,286	2,969,148	1,346,806
Maine	+999	+453	12,396	5,623	13,395	6,076
Massachusetts	+10,957	+4,970	1,219,773	553,289	1,230,730	558,259
Connecticut	+13,965	+6,335	459,408	208,387	473,373	214,722
New York	+10,412	+4,723	1,414,282	641,518	1,424,694	646,241

[1]Reflects quotas as published on June 21, 2005 (70 FR 35557), inclusive of previous Addendum XV and ''safe harbor'' transfers.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 12, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20829 Filed 10–13–05; 3:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158–5262–03; I.D. 090105A]

RIN 0648–AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency action.

SUMMARY: This action reinstates the temporary regulations published in the **Federal Register** on September 9, 2005, and establishes the prohibition that was inadvertently omitted in the September 9, 2005 rule. In the September 9, 2005, temporary rule, NMFS continued the closure through September 30, 2005, of one portion of an area it had previously closed on June 16, 2005, to the harvest for human consumption of certain bivalve molluscan shellfish due to the presence in those waters of the toxin that causes Paralytic Shellfish Poisoning (PSP). The prohibition of harvesting whole or roe-on sea scallops, only, in the other portion of the area previously closed on June 16, 2005, was inadvertently omitted from the regulatory text of the September 9, 2005, publication. NMFS establishes this prohibition in this action. The intent of this action is to respond to the request of the U.S. Food and Drug Administration (FDA), having determined on September 23, 2005, that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish fishing on October 1, 2005.

DATES: Effective October 18, 2005, through December 31, 2005. Comments must be received by November 17, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: *PSPclosure2@NOAA.gov*. Include the subject line the following: ''Comments on the October Emergency Rule for Area closures Due to PSP.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on October PSP closure.''
- Fax:(978) 281–9135.

Copies of the small entity compliance guide prepared for the September 9, 2005, emergency action are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The small entity compliance guide/permit holder letter is also accessible via the Internet at *http://www.nero.noaa.gov*. Copies of the emergency rule are available from Patricia A. Kurkul, at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION:

Background

Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances.

On June 10, 2005, the FDA requested that NMFS issue an emergency rule to close an area of Federal waters to the harvesting of bivalve molluscan shellfish intended for human consumption because of toxic algal blooms off the coasts of New Hampshire and Massachusetts. This closure prohibited harvests of shellfish such as Atlantic surfclams and ocean quahogs, as well as scallop viscera. The emergency rule for the action, published in the **Federal Register** on June 16, 2005 (70 FR 35047), stated it would be in effect from June 14 through September 30, 2005, unless extended. The emergency rule was modified on July 7, 2005 (70 FR 39192) to allow for the collection of biological samples by commercial fishing vessels issued a Letter of Authorization signed by the Regional Administrator.

The action temporarily closed all Federal waters of the Exclusive Economic Zone of the northeastern United States to any bivalve molluscan shellfish harvesting, except for Atlantic sea scallops shucked at sea for their adductor muscles, in the area bound by the following coordinates in the order stated: (1) 43° 00′ N. lat., 71° 00′ W. long.; (2) 43° 00′ N. lat., 69° 00′ W. long.; (3) 40° 00′ N. lat., 69° 00′ W. long.; (4) 40° 00′ N. lat., 71° 00′ W. long., and then ending at the first point. The scallop adductor muscle, or ''meat,'' is unaffected by the toxin. Further details of the original closure may be found in the June 16, 2005, and the July 7, 2005,

Federal Register rules, and are not repeated here.

As a result of tests conducted by the FDA in cooperation with NMFS and the fishing industry, it was determined that toxin levels in a portion of the closure area (described below) were well below those known to cause human illness. With the exception of whole and roe-on scallops, the FDA determined that harvesting of bivalve molluscan shellfish for human consumption from the area described was once again safe.

At the FDA's request, on September 9, 2005, NMFS reopened those waters south of 41°39′ N. lat., west of 69°00′ W. long., north of 40°00′ N. lat., and east of 71°00′ W. long. (70 FR 53580). Because scallop viscera and roe are capable of retaining PSP toxins longer than other species of molluscan shellfish, scallop harvesting was only permitted in the reopened area for the purpose of shucking of the adductor muscle; however, although this limitation was discussed in the preamble of the September 9, 2005 temporary rule, it was inadvertently omitted from the regulatory text.

In the absence of further notice from the FDA, the entire temporary closure would have expired on October 1, 2005. FDA determined on September 23, 2005, that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on October 1, 2005; therefore FDA requested that NMFS continue the regulations through December 31, 2005.

On October 3, 2005, a document was published in the **Federal Register** (70 FR 57517) intending to extend the expiration date of the September 9, 2005, temporary rule from September 30, 2005, to December 31, 2005. Although the date of filing for public inspection by the Office of the **Federal Register** occurred on September 27, 2005, the document was not published in the **Federal Register** until October 3, 2005, leaving no regulations in place after September 30, 2005 (the original expiration date). Therefore, NMFS issues this temporary rule to (1) reinstate the prohibition to fish for, harvest, catch, or possess any bivalve shellfish except sea scallops harvested only for adductor muscles and shucked at sea in the area described in § 648.14(a)(170) and (2) allow the harvest of bivalve molluscan shellfish other than whole or roe-on Atlantic sea scallops, as described in § 648.14(a)(171).

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c).

Pursuant to section 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to a public health emergency as described below. In addition, under section 553(d)(3) there is good cause to waive the 30-day delay in effectiveness due to a public health emergency as described below. The original emergency closure was in response to a public health emergency. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish by this action reinstates the September 9, 2005 temporary rule through December 31, 2005. This action also prohibits the retention of whole or roe-on sea scallops in an area as described in § 648.14(a)(171) because of the possible retention of PSP. This rule may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary of Commerce's action. The public had opportunities to comment on the earlier regulations establishing the closures and one comment was received. The commenter expressed her reluctance to agree with reopening a portion of the closure without seeing the results of the FDA's tests. While NMFS is the agency with authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the behest of the FDA after the FDA had determined that the results of its tests warranted such action. Accordingly, the Secretary of Health and Human Services and the Secretary of Commerce concur that the emergency regulations, as modified, should be reinstated through December 31, 2005. Subsequently, if warranted, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D), by publication in the **Federal Register** of a notice of termination.

Because prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule is determined to be not significant under Executive Order 12866.

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

Dated: October 13, 2005.

James W. Balsiger,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (a)(170) and (a)(171) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(170) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the are of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 43° 00′ N. lat., 71° 00′ W. long.,; (2) 43° 00′ N. lat., 69° 00′ W. long.; (3) 41° 39′ N. lat., 69° 00′ W. long; (4) 41° 39′ N. lat., 71° 00′ W. long., and then ending at the first point.

(171) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops except for sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 41° 39′ N. lat., 71° 00′ W. long.; (2) 41° 39′ N. lat., 69° 00′ W. long.; (3) 40° 00′ N. lat., 69° 00′ W.

long.; (4) 40° 00′ N. lat., 71° 00′ W. long., and then ending at the first point.

* * * * *

[FR Doc. 05–20893 Filed 10–14–05; 11:25 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 200
Tuesday, October 18, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) (RRC) 250–B and 250–C Series Turboshaft and Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain RRC 250–B and 250–C series turboshaft and turboprop engines. That AD currently requires a onetime inspection of the fuel nozzle screen for contamination, and if contamination is found, inspection and cleaning of the entire aircraft fuel system before further flight. That AD also requires replacing the fuel nozzle with a new design fuel nozzle, at the next fuel nozzle overhaul or by June 30, 2006, whichever occurs first. This proposed AD would require the same actions, but would add additional part numbers (P/Ns) to the list of affected fuel nozzles. This proposed AD would also explain that the existing AD, as worded, allows certain part number (P/N) fuel nozzles back into service. Those fuel nozzles must not be allowed back into service. This proposed AD results from the discovery that several P/Ns of fuel nozzles were inadvertently left out of AD 2004–24–09. We are proposing this AD to minimize the risk of sudden loss of engine power and uncommanded shutdown of the engine due to fuel contamination and collapse of the screen in the fuel nozzle.

DATES: We must receive any comments on this proposed AD by December 19, 2005.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–NE–10–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 identified in this proposed AD from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2004–NE–10–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 proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed 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.

Discussion

On November 22, 2004, we issued AD 2004–24–09, Amendment 39–13885 (69 FR 69807, December 1, 2004). That AD requires a onetime inspection of the fuel nozzle screen for contamination, and if contamination is found, inspection and cleaning of the entire aircraft fuel system before further flight. That AD also requires replacing the fuel nozzle with a new design fuel nozzle, at the next fuel nozzle overhaul or by June 30, 2006, whichever occurs first. That AD was the result of 10 reports of engine power loss with accompanying collapse of the fuel nozzle screen, due to fuel contamination. That condition, if not corrected, could result in sudden loss of engine power and uncommanded shutdown of the engine due to fuel contamination and collapse of the screen in the fuel nozzle.

Actions Since AD 2004–24–09 Was Issued

Since AD 2004–24–09 was issued, we discovered that several RRC and Parts Manufacturer Approval (PMA) fuel nozzle part numbers were inadvertently left out of the AD. Additionally, we discovered that certain RRC fuel nozzles are only identified by their vendor part number. Because AD 2004–24–09 defined a serviceable fuel nozzle as a nozzle that has a P/N not specified in, or addressed by, that AD, it is possible that operators could return to service fuel nozzles, P/Ns 6874959, 6894610, and 6898531, and then record being in compliance with AD 2004–24–09. In those cases, the minimizing of the risk of sudden loss of engine power and uncommanded shutdown of the engine due to fuel contamination and collapse of the screen in the fuel nozzle, has not been achieved. We have added these additional RRC, PMA, and vendor part numbers to this proposed AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would minimize the risk of sudden loss of engine power and uncommanded shutdown of the engine due to fuel contamination and collapse of the screen in the fuel nozzle. This proposed AD requires:

- A onetime inspection of the screens in certain P/N fuel nozzles for contamination within 50 operating hours after the effective date of the proposed AD; or
- A onetime inspection of the screens in certain P/N fuel nozzles for contamination within 150 operating hours after January 5, 2005, unless already done using AD 2004–24–09; and
- If contamination is found, inspecting and cleaning the entire aircraft fuel system, before further flight; and
- Replacing the fuel nozzles listed in this AD with a new design fuel nozzle, at the next fuel nozzle overhaul or by June 30, 2006, whichever occurs first.

Costs of Compliance

There are about 15,000 RRC 250–B and 250–C series turboshaft and turboprop engines of the affected design in the worldwide fleet. We estimate that 10,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD. We also estimate that it would take about one work hour per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. In addition, operators can either replace the fuel nozzle with a new one at a cost of about $2,595 or have the existing nozzle overhauled at a cost of about $850. We estimate that about 80% of the fuel nozzles will be overhauled and 20% will be replaced with a new nozzle. Therefore, we estimate that the required parts would cost, on average, about $1,200 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $12,650,000.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD will not have federalism implications under Executive Order 13132. This proposed 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 proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2004–NE–10–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13885 (69 FR 69807, December 1, 2004), and by adding a new airworthiness directive to read as follows:

Rolls-Royce Corporation: Docket No. 2004–NE–10–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 19, 2005.

Affected ADs

(b) This AD supersedes AD 2004–24–09.

Applicability

(c) This AD applies to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) (RRC) 250–B and 250–C series turboshaft and turboprop engines in the following Table 1:

TABLE 1.—250–B AND 250–C SERIES TURBOSHAFT AND TURBOPROP ENGINES AFFECTED

–B15A
–B15E
–B15G
–B17
–B17B
–B17C
–B17D
–B17E
–B17F
–B17F/1
–B17F/2
–C18
–C18A
–C18B
–C18C
–C20
–C20B
–C20C
–C20F
–C20J
–C20R
–C20R/1
–C20R/2
–C20R/4
–C20S
–C20W
–C28
–C28B
–C28C
–C30
–C30G
–C30G/2
–C30M
–C30P
–C30R
–C30R/1
–C30R/3
–C30R/3M
–C30S
–C30U
–C40B
–C47B
–C47M

These engines are installed on, but not limited to, the aircraft listed in the following Table 2:

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO

Manufacturer	Model
Agusta	A109, A109A, A109AII, and A109C.
Bell Helicopter Textron	47, 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, 407, and 430.
B–N Group	BN–2T and BN–2T–4R.
Enstrom	TH28, 480; and 480B.
Eurocopter Canada Limited	BO 105 LS A–3.
Eurocopter France	AS355E, AS355F, AS355I, and AS355F2.
Eurocopter Deutschland	BO–105A, BO–105C, BO–105S, and BO–105LS A–1.
Hiller Aviation	FH–1100.
McDonnell Douglas	369D, 369E, 369F, 369H, 369HE, 369HM, 369HS, 369FF, and 500N.
Schweizer	TH269D.
SIAI Marchetti s.r.l.	SF600 and SF600A.
Sikorsky	S–76A.

Unsafe Condition

(d) This AD results from the discovery that several part numbers (P/Ns) of fuel nozzles were inadvertently left out of AD 2004–24–09. That AD, as worded, allows certain P/N fuel nozzles back into service. Those fuel nozzles must not be allowed back into service. We are issuing this AD to minimize the risk of sudden loss of engine power and uncommanded shutdown of the engine due to fuel contamination and collapse of the screen in the fuel nozzle.

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.

(f) Perform a onetime inspection of the screens in fuel nozzles as follows:

(1) For fuel nozzles with a P/N listed in Table 3 of this AD, inspect the screen for contamination within 50 operating hours after the effective date of this AD.

TABLE 3.—FUEL NOZZLES TO BE INSPECTED WITHIN 50 OPERATING HOURS

Manufacturer	P/N	Corresponding RRC vendor P/N
RRC	6874959	5232815
	6894610	5233465
	6898531	5233585
Delevan Inc. (PMA)	49445	N/A
	47069	N/A
	47101	N/A

(2) For fuel nozzles with a P/N listed in Table 4 of this AD, inspect the screen for contamination within 150 operating hours after January 5, 2005.

TABLE 4.—FUEL NOZZLES TO BE INSPECTED WITHIN 150 OPERATING HOURS

Manufacturer	P/N	Corresponding RRC vendor P/N
RRC	6852020	5232480
	6890917	5233333
	6899001	5233600

(g) Before further flight, inspect and clean the entire aircraft fuel system if you find any contamination on the screen.

(h) At the next fuel nozzle overhaul after the effective date of this AD, or by June 30, 2006, whichever occurs first, do the following:

(1) Remove from service fuel nozzles listed in Table 3 and Table 4 of this AD.

(2) Replace with a serviceable fuel nozzle.

Definition

(i) For the purposes of this AD, a serviceable fuel nozzle is defined as a nozzle that has a P/N not specified in, or addressed by, this AD.

Previous Credit

(j) Previous credit is given for onetime inspections of fuel nozzles, RRC P/Ns 6852020, 6890917, and 6899001 using AD 2004–24–09.

Alternative Methods of Compliance

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

Related Information

(l) Information related to the subject of this AD can be found in Rolls-Royce Corporation Alert Commercial Engine Bulletins (CEBs), all at Revision 1, and all dated August 30, 2004, listed in the following Table 5:

TABLE 5.—RELATED ALERT COMMERCIAL ENGINE BULLETINS

CEB–A–313	CEB–A–73–5029.
CEB–A–73–2075	CEB–A–73–6041.
CEB–A–1394	TP CEB–A–183.
CEB–A–73–3118	TP CEB–A–1336.
CEB–A–73–4056	TP CEB–A–73–2032.

Issued in Burlington, Massachusetts, on October 11, 2005.

Ann C. Mollica,

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

[FR Doc. 05–20779 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC63

NASA Grant and Cooperative Agreement Handbook—Research and Development Abstracts

AGENCY: National Aeronautics and Space Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws the proposed rule published Friday, October 31, 2003 (68 FR 62031–62033). NASA will issue internal guidance to automate the collection and transfer of Research and Development (R&D) abstracts to an appropriate central repository where they will be available for use by government agencies and other users.

DATES: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Monique Sullivan, NASA Headquarters, Contract Management Division, Washington, DC, (703) 553–2560, e-mail: *Monique.sullivan-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In the proposed rule published Friday, October 31, 2003 (68 FR 62031–62033), NASA proposed to amend the NASA Grant and Cooperative Agreement Handbook to include a requirement for the electronic submission of abstracts of the planned research to be conducted under grants and cooperative agreements containing research and development (R&D) effort valued at over $25,000.

The proposed rule added a new provision, 1260.40, NASA Research and Development (R&D) Abstracts, and related instructions, 1260.18, NASA Research and Development (R&D) Abstract Collection, to the Grant and Cooperative Agreement Handbook. The new provision provided for the collections of abstracts or summaries for NASA-funded-awards with R&D effort greater than $25,000. The requirements of section 207(g) of the E-Government Act of 2002 (Pub. L. 107–347) provide the basis for this change. Section 207(g) mandates the development and maintenance of a repository that integrates information on research and development funded by the FederalGovernment. In furtherance of this requirement, NASA established a Web-based database system to collect summaries or abstracts for all the Agency's procurements containing research and development effort valued over $25,000. A NASA Web site was also established for recipients of NASA R&D grants and cooperative agreements to enter their abstract data. The proposed rule is withdrawn because the automation of the requirements of section 207(g) of the E-Government Act of 2002 (Pub. L. 107–347) voids the need for the proposed rule.

James A. Balinskas,

Acting Assistant Administrator for Procurement.

[FR Doc. 05–20845 Filed 10–17–05; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 131 and 292

[Docket No. RM05–36–000]

Revised Regulations Governing Small Power Production and Cogeneration Facilities

October 11, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing small power production and cogeneration pursuant to section 1253 of the Energy Policy Act of 2005 (EPAct 2005), and section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Specifically, the Commission is proposing to (1) issue a rule ensuring that new qualifying cogeneration facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of the new qualifying cogeneration facilities is used fundamentally for industrial, commercial or institutional purposes; and that there is continuing progress in the development of efficient electric energy generating technology; (2) amend Form 556 to reflect the criteria for new qualifying cogeneration facilities, (3) issue a rule eliminating ownership limitations for qualifying cogeneration and small power production facilities; and (4) amend the exemptions available to qualifying facilities from the requirements of the Federal Power Act and the Public Utility Holding Company Act of 1935.

DATES: Comments are due November 8, 2005. Reply Comments are due November 15, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Introduction

1. Pursuant to section 1253 of the Energy Policy Act of 2005 (EPAct 2005),[1] the Commission is proposing to amend its regulations governing qualifying cogeneration and small power production facilities. Specifically, the Commission is proposing to (1) issue a rule ensuring that new qualifying cogeneration facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial or institutional purposes; and that there is continuing progress in the development of efficient electric energy generating technology; (2) amend Form 556 [2] to reflect the criteria for new qualifying cogeneration facilities, (3) issue a rule eliminating ownership limitations for qualifying cogeneration and small power production facilities; and (4) amend the exemptions available to qualifying facilities (QFs) from the requirements of the Federal Power Act (FPA) [3] and the Public Utility Holding Company Act of 1935 (PUHCA).[4] Consistent with the requirements of section 1253(a) of EPAct 2005, the Commission intends to issue a final rule by February 4, 2006, which is 180 days after enactment of EPAct 2005.

Background

2. Section 1253(a) of EPAct 2005 amends section 210 of PURPA [5] by adding subsection (n). New section 210(n) of PURPA requires the Commission to revise 18 CFR 292.205 to add criteria for new qualifying cogeneration facilities in order to ensure (1) that the thermal energy output of any new qualifying cogeneration facility is used in a productive and beneficial manner; (2) the electrical, thermal, and chemical output of any new qualifying cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and (3) continuing progress is made in the development of efficient electric energy generating technology. We propose regulations implementing section 210(n) of PURPA below.

3. Section 1253(b) of EPAct 2005 amends the FPA to eliminate ownership limitations for qualifying cogeneration and small power production facilities. PURPA, as originally enacted in 1978, limited ownership of qualifying cogeneration and small power production facilities to individuals not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration or small power production facilities. Section 1253(b) of EPAct 2005 eliminates that limitation on ownership. We propose to revise our regulations to implement this provision of EPAct 2005 below.

Proposed Revisions to Regulations

I. Section 292.205 Criteria For Qualifying Cogeneration Facilities

4. Section 1253(a) of EPAct 2005 adds section 210(n) to PURPA. Section 210(n) of PURPA directs the Commission to revise the criteria in 18 CFR 292.205 for new qualifying cogeneration facilities.[6] Specifically, new section 210(n)(1)(A) of PURPA requires that section 292.205 of the Commission's regulations be revised to ensure:

(i) That the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

(ii) The electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) Continuing progress in the development of efficient electric energy generating technology.

5. The Commission proposes to revise section 292.205 of its regulations by adding section 292.205(d), which will incorporate the language of sections 210(n)(1)(A)(i), 210(n)(1)(A)(ii) and 210(n)(1)(A)(iii) of PURPA as sections 292.205(d)(i), (ii) and (iii). We propose to apply this language on a case-by-case basis to determine whether a new cogeneration facility can be considered a qualifying cogeneration facility. As guidance to applicants, we will discuss below what we believe the language of section 210(n), and the language of the regulations proposed here, require a new cogeneration facility to show for certification.

6. We solicit comments on whether further or different language than that proposed here should be incorporated in our regulations.

A. Section 210(n)(1)(A)(i) of PURPA

7. Section 210(n)(1)(A)(i) of PURPA requires that the thermal output of a new qualifying cogeneration facility be used in a ''productive and beneficial manner.'' The Commission proposes to incorporate this standard into new section 292.205(d)(i) of its regulations. Prior to EPAct 2005's enactment, the Commission, in deciding whether to grant certification, traditionally relied on an essentially irrebuttable ''presumptively useful'' standard in determining whether a cogeneration facility's thermal output is useful. Explaining that standard, in *Brooklyn Navy Yard Cogeneration Partners, L.P.*, the Commission stated, ''[i]f the use of a cogeneration facility's thermal output constitutes a common industrial or commercial application, it is presumptively useful and the Commission performs no further analysis of thermal use.'' [7] However, there has long been concern that an irrebuttable ''presumptively useful'' standard has led to situations where cogeneration facilities have qualified even where there was no real need for the thermal output, and the sole reason for the thermal use was to satisfy the Commission's requirement for QF status and nothing more. An example of such a thermal use was the production of distilled water where there is no market for the distilled water.[8]

[1] Pub. L. No. 109–58, § 1253, 119 Stat. 594 (2005).

[2] Form 556 is set forth in 18 CFR 131.80.

[3] 16 U.S.C. 824 *et seq.*

[4] 15 U.S.C. 79a *et seq.*

[5] 16 U.S.C. 824a–3.

[6] EPAct 2005 provides that the Commission's pre-existing criteria for qualifying cogeneration facilities shall remain in effect for any cogeneration facility that: (A) was a qualifying cogeneration facility on the date of enactment of section 210(m) of PURPA, *i.e.*, on August 8, 2005, or (B) had filed with the Commission a notice of self-certification, self-recertification, or an application for Commission certification under 18 CFR 292.207 prior to the date on which the Commission issues the final rule in this proceeding.

[7] 74 FERC ¶ 61, 015 (1996).

[8] *Brazos Electric Power Cooperative* v. *Tenaska IV Texas Partners, Ltd.*, 83 FERC ¶ 61,176 at 61,727, *reh'g denied*, 85 FERC ¶ 61,097 (1998), *aff'd, Brazos Electric Power Cooperative, Inc.* v. *FERC*, 205 F.3d 235 (5th Cir. 2000), *reh'g denied en banc*, 214 F.3d 214 (5th Cir. 2000), *cert. denied*, 531 U.S. 957 (2000 (*Brazos*). *Accord Wilbur Power LLC*, 103 FERC ¶ 61,183, *clarified*, 104 FERC ¶ 61,055 at 61,201 (2003); *Brooklyn Navy Yard Cogeneration Partners, L.P.*, 74 FERC ¶ 61,015 at 61,046 (1996); *EcoEléctrica*, L.P., 108 FERC ¶ 61,249 at P 25 (2004).

In the *Brazos* case, the cogeneration facility produced distilled water that was, for a time, used to wash a city's sewers. The purchaser of the electric power from the facility asked the Commission to decertify the facility. The Commission, using the ''presumptively useful''

Continued

8. The Commission, in applying its new section 292.205(d)(i), will now consider whether a new cogeneration facility's proposed use of its thermal output is for a genuine and legitimate industrial, commercial, or institutional purpose or whether, in reality, the use serves merely to allow the applicant to achieve qualifying status under PURPA. We believe that this approach will allow us to determine whether the thermal output is being used in a ''productive and beneficial manner,'' as the statute requires.

9. In the future, therefore, we will not consider any presumption of usefulness to be irrebuttable, as we have in the past, but we will consider the presumption to be rebuttable and we will scrutinize the use a cogeneration facility makes of its thermal output to assure that the use is not a ''sham'', and that the thermal output is used in a ''productive and beneficial manner''. In this regard, in determining whether the thermal output of a cogeneration facility is ''useful'' for purposes of certification as a qualifying facility, we will also consider the uses to which the product produced by the thermal output is put, including such factors as whether the product is needed and whether there is a market. In the case of distilled water, in some geographic areas water distilled with cogenerated thermal output can be and is used in a productive and beneficial manner, while in other geographic areas it is not.

B. Section 210(n)(1)(A)(ii) of PURPA

10. Section 210(n)(1)(A)(ii) of PURPA requires that the Commission must ensure that the electrical, thermal, and chemical output of a new cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. We propose to implement section 210(n)(1)(A)(ii) of PURPA by adopting the language of the statute. In addition, the Commission will add the term ''mechanical'' output to the statutory criteria, because this has traditionally been a part of the Commission's analysis of cogeneration output, and is consistent with the statutory language.

11. There was long concern over what were known as ''PURPA machines.'' PURPA machines were facilities that were intended fundamentally to produce electric power for sale to an electric utility. PURPA machines differed from cogeneration facilities intended fundamentally to serve the thermal, electrical or other needs of the cogeneration facility's host.

12. Facilities that are intended primarily to meet the needs of the cogeneration facility's host are sized for that purpose. The useful energy output of such a cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and only the remaining energy is available for sale to electric utilities. We will require that applications for certification under new section 210(n) of PURPA, and new section 292.205(d)(ii) of our regulations, provide a detailed explanation of how the cogeneration facility meets the requirement that the electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. We seek comment on whether we should adopt this general case-by-case approach for determining the ''fundamental'' use of a facility, or whether we should adopt a specific standard, *e.g.*, requiring some specified percentage of the total energy output to be used for industrial, commercial, or institutional purposes, rather than for sale to electric utilities.

13. It has been our experience in reviewing applications for certification that cogeneration facilities designed to minimally meet the pre-existing operating standard, *i.e.*, those whose thermal output constitutes only 5 percent of the total energy output of the facility, are the facilities most likely to be designed fundamentally to sell electric output to electric utilities rather than being designed fundamentally to provide electrical, thermal, and other output for industrial, commercial, or institutional purposes. On the other hand, our experience has been that facilities with higher operating standards are much more likely to be designed fundamentally to provide electrical, thermal, and other output for industrial, commercial, or institutional purposes. To help assure that new qualifying cogeneration facilities are intended fundamentally to provide electrical, thermal, chemical and mechanical output for industrial, commercial or institutional purposes, we will pay particular attention to those facilities that only minimally satisfy the Commission's operating standard.

C. Section 210(n)(1)(A)(iii) of PURPA

14. New section 210(n)(1)(A)(iii) of PURPA requires the Commission to issue rules to ensure ''the continuing progress in the development of efficient electrical energy generating technology.'' The Commission's proposed implementation of this requirement will be by a verbatim recitation of the statute. In an application for certification of new cogeneration facilities, the Commission will require a description of how the technology used by an applicant for certification satisfies this requirement. In general, we believe new section 210(n)(1)(A)(iii) of PURPA requires that all new cogeneration applicants demonstrate their employment of efficient, modern technologies, but all such applicants that request the Commission to exercise any of the limited discretion given under section 210(n)(1)(A)(ii) to ''[take] into account technological, efficiency, economic and variable thermal energy requirements * * *'' should be particularly prepared to make such a demonstration.

15. In addition, to ensure continuing progress in the development of efficient electric energy technology, the Commission proposes to apply an efficiency standard to new coal-burning cogeneration facilities similar to that applied to natural gas and oil-burning cogeneration facilities. Currently, section 292.205(a)(2) of the Commission's regulations establishes an efficiency standard for topping-cycle cogeneration facilities for which any of the energy input is natural gas or oil. Under this efficiency standard, the useful power output of the facility plus one-half the useful thermal energy output during the applicable period must be no less than 42.5 percent of the total energy input of natural gas or oil. If the useful thermal energy output is less than 15 percent of the total energy output of the facility, the useful power output of the facility plus one-half of the useful energy output must be no less

standard, found that the use that an unaffiliated party makes of the distilled water purchased at arms' length was irrelevant to whether the facility qualified under the standard.

The Commission, earlier this year, however, determined that an unaffiliated purchaser of steam from a cogeneration facility could not distill water with that steam and then sell the distilled water to the cogeneration facility to be used in the power production process. The Commission labeled the proposed transaction a ''sham,'' in that the distilled water was being produced not to serve a legitimate industrial, commercial, heating, or cooling purpose but rather to help the applicant gain qualifying status under PURPA. *Calpine King City Cogen, LLC*, 111 FERC ¶ 61,174 (2005), *reh'g denied*, 112 FERC ¶ 61,088 (2005).

than 45 percent, rather than 42.5 percent. The Commission's current efficiency standard ensures that the facility operates at or above a certain level of performance when it uses natural gas or oil.

16. Given advances in electric generating technology, it now appears appropriate to implement an efficiency standard for coal-fired cogeneration facilities. For example, there is the potential for efficiency improvements at pulverized coal-fired plants using existing technology through operational changes and equipment upgrades. There is also the potential for improved thermal efficiencies through the use of pulverized coal-fired plants built with newer technologies and by the utilization of supercritical steam. Under Department of Energy research and development programs, two new technologies—Pressurized Fluid Bed Combustion and Integrated Gasification Combined Cycle—have created combined cycle operations within coal-fired facilities. These two types of facilities have improved thermal efficiencies as compared to conventional pulverized coal-fired facilities and are currently in commercial use. The Commission would like to know what methods of quantifying efficiency the Commission should consider. The Commission requests comments on what the minimum efficiency for such new coal-fired cogeneration facilities should be.

17. The Commission invites comments on this as well as on other ways by which it can ''ensure continuing progress in the development of efficient electrical energy generating technology.''

D. Section 292.207 Procedures for Obtaining Qualifying Status

18. In light of the criteria for new cogeneration facilities, we invite comments on whether the self-certification procedures contained in section 292.207 should be available to new cogeneration facilities.

II. Section 292.601 Exemption of Qualifying Facilities From the Federal Power Act.

19. Section 210(e)(1) of PURPA states that the Commission shall prescribe rules under which qualifying facilities are exempt, in whole or in part, from the FPA, from PUHCA, from state laws and regulations respecting the rates or respecting the financial or organization regulation of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production. Section 210(e)(2) of PURPA provides that the Commission is not authorized to exempt small power production facilities of 30 to 80 megawatt capacity from these laws, except for geothermal small power production facilities. Such facilities between 30 and 80 megawatts may be exempted from PUHCA and from state laws and regulations, but may not be exempted from the FPA.

20. In Order No. 69,[9] the Commission first implemented section 210(e) of PURPA. The Commission at that time stated that a broad exemption was then appropriate to remove the disincentive of utility-type regulation from QFs, including sections 203, 205, 206, 208, 301 and 304 of the FPA. In section 292.601 of its regulations, the Commission exempted QFs (other than non-geothermal small power production facilities between 30 and 80 megawatts) from sections 203, 205, 206, 208, 301 and 304 of the FPA.

21. The Commission has traditionally interpreted this exemption broadly. For instance, in *Pine Bluff Energy, LLC*[10] and *Carville Energy LLC*,[11] the Commission dismissed filings proposing rates for reactive power filed by two QFs on the ground that, as QFs, the facilities were exempt from section 205 of the FPA, and their rates were thus not subject to Commission review under section 205 of the FPA. Similarly, in *SP Newsprint Co.*,[12] the Commission dismissed an application for market-based rate authority filed by a QF, saying that because a QF is exempt from section 205 of the FPA, it does not need Commission authority to make market-based rate sales.

22. In the context of this rulemaking, the Commission finds that it is appropriate to reexamine the broad exemptions from the FPA granted to QFs. First, roughly 25 years after the enactment of PURPA, we do not believe that all of the exemptions from the FPA are still necessary to encourage the development of cogeneration facilities and small power production facilities. Second, we are concerned that the broad nature of the exemptions currently set forth in section 292.601 remove a large number of generation sales from *any* regulatory oversight.

23. For purposes of evaluating exemptions, it is important to distinguish between different types of sales made by QFs. Those sales made pursuant to the must purchase obligation contained in section 210 of PURPA have typically been referred to as ''PURPA sales''. Those sales are subject to state regulatory commission oversight and the avoided cost rates for those sales are set by the states pursuant to our regulations. However, a large number of QFs make market-based sales, which are often referred to as ''non-PURPA sales''. Many QFs are large units and their non-PURPA sales could potentially have a significant market effect. Nevertheless, under our current regulations, these QFs are not required to file for market-based rate authority under section 205 of the FPA. Moreover, if there were allegations of any type of market misconduct by these QFs, the Commission might not be able to effectively investigate and remedy the misconduct because our current regulations exempt these QFs from section 206 of the FPA.

24. Our concern is heightened by the fact that, in section 1253(b) of EPAct 2005, Congress has eliminated the ownership requirements for QF status, and, consistent with the new provision, we are proposing to eliminate the ownership requirements currently contained in sections 292.203(a)(3), 292.203(b)(2) and 292.206 of our regulations. Therefore, traditional utilities will now be able to own up to 100 percent of a QF. We believe that QFs, which now may be largely or wholly-owned by traditional utilities, generally should not be exempt from regulation under the FPA.

25. The elimination of the ownership requirements for QF status also will permit QFs to sell electric energy ''other than electric power solely from cogeneration facilities or small power production facilities.'' The Commission previously has interpreted this language to prohibit a QF from selling more than its net output.[13] The elimination of the ownership requirements will now permit a qualifying facility to sell electric energy other than electric energy produced by itself or another qualifying facility and still retain QF status. However, such sales should not be entitled to exemptions from the FPA; nor should qualifying facilities that

[9] *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 FR 12,214 (Feb. 25, 1980), FERC Stats. & Regs. ¶ 30,128 (1980).

[10] 104 FERC ¶ 61,227, *reh'g denied*, 105 FERC ¶ 61,152 (2003).

[11] 104 FERC ¶ 61,832, *reh'g denied*, 105 FERC ¶ 61,152 (2003).

[12] 103 FERC ¶ 61,186 (2003).

[13] *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, Inc.*, 82 FERC ¶ 61,116 (1998), *reh'g denied*, 83 FERC ¶ 61,136 (1998).

make such sales be entitled to exemptions from the FPA.[14]

26. We propose to eliminate, among other things, the exemptions from sections 205 and 206 of the FPA that the Commission previously granted in section 292.601 of our regulations, except the exemption from sections 205 and 206 of the FPA for sales that are governed by state regulatory authorities pursuant to section 210(f) of PURPA. These latter sales are at rates pursuant to contracts or obligations approved by state regulatory authorities. Since such sales are pursuant to the regulatory oversight set forth in section 210(f) of PURPA, an exemption from sections 205 and 206 of the FPA remains appropriate for those sales.

27. A QF which sells electric energy pursuant to a state regulatory authority avoided-cost ratemaking regime would remain exempt from section 205, however, and therefore would not make a section 205 filing with the Commission (unless it also makes sales of electric energy that are not pursuant to a state regulatory authority avoided-cost ratemaking regime). But a QF that, on the other hand, plans to make market-based rate sales, *i.e.*, sales that are not pursuant to the state regulatory authority's avoided-cost ratemaking regime, must have a Commission-accepted market-based rate tariff for such sales.[15]

28. We recognize that the removal of exemptions might create a hardship for smaller QFs, particularly those owned by individuals or small businesses. We would consider suggestions that at least some of the exemptions previously granted in section 292.601 should remain in effect for smaller QFs, such as those under 5 MW. Another key element to consider in the granting of exemptions, as suggested above, is whether the QF is independent of traditional utilities, transmission providers and other power producers; we invite comments on whether exemptions previously granted under section 292.601 (and continued here) should remain in effect only for those QFs that are independent of traditional utilities, transmission providers and other power producers.

29. In addition, EPAct 2005, in sections 1281 (Electric Market Transparency), 1282 (False Statements) and 1283 (Market Manipulation), has added new provisions, sections 220, 221 and 222, to the FPA. We propose that QFs will not be exempt from those provisions of the FPA.

30. We invite comments on whether the Commission should eliminate or retain exemptions from other sections of the FPA that are granted by our current regulations. Currently, most QFs (except for non-geothermal small power production facilities that exceed 30 megawatts) are exempt from all provisions of the FPA except sections 1–18, and 21–30; sections 202(c), 210, 211, 212, 213 and 214; section 305(c); and any necessary enforcement provisions with regard to the listed provisions.

31. We also propose to eliminate the exemptions from PUHCA contained in section 292.602 of our regulations. PUHCA has been repealed and the new Public Utility Holding Company Act of 2005 (PUHCA 2005) provides specific authority under which the Commission is to grant exemptions from PUHCA 2005 for entities that are holding companies by virtue of owning QFs. We will retain the exemptions from certain state laws and regulations contained in section 292.602 of our regulations; section 292.602(c)(3), which provides that the Commission will consider the requests of state regulatory authorities or nonregulated utilities to limit the exemptions from state law or regulation, will be retained as section 292.602(b)(3). We invite comments on these proposals.

III. Section 292.203 General Requirements for Qualification and Section 292.206 Ownership Criteria

32. Section 1253(b) of EPAct 2005 amends sections 3(17)(C) and 3(17)(B) of the Federal Power Act by eliminating the ownership limitations for QFs currently contained in those sections. Section 292.206 of the Commission's regulations was designed to implement the statutory requirement that a qualifying cogeneration or small power production facility must be owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). The Commission proposes to implement section 1253(b) of EPAct 2005 by eliminating section 292.206 from its regulations, and thus eliminating the ownership limitations for all QFs—both existing and new.

33. Section 292.203 lists the general requirements for qualification status. Section 292.203(a)(3) requires that a small power production facility must ''[m]eet[] the ownership criteria specified in § 292.206.'' Section 292.203(b)(2) requires that a cogeneration facility must ''[m]eet[] the ownership criteria specified in § 292.206.'' In light of the elimination of the ownership limitations for all QFs and the Commission's proposal to delete section 292.206, the Commission proposes to delete from section 292.203 these references to the ownership limitation from the requirements for qualifying small power production facilities and qualifying cogeneration facilities. Therefore, the Commission proposes to delete sections 292.203(a)(3) and 292.203(b)(2) from its regulations.

IV. Section 131.80, Form 556

34. The new criteria proposed herein for new qualifying cogeneration facilities require changes in Form 556, found at 18 CFR 131.80, which is used by those seeking qualifying facility status, whether by Commission application or by self-certification. We propose to amend 18 CFR 131.80 to incorporate the new criteria for new cogeneration facilities.

35. In addition, section 292.206 is being removed to implement section 1253(b) of EPAct 2005, which eliminates the ownership limitations for QFs currently contained in sections 3(17)(A) and 3(17)(B) of the FPA. The removal of section 292.206 requires amendment of Form 556 to reflect the new criteria for QF status. We thus propose to eliminate references in Form 556 to the necessity of showing that a QF is not owned more than 50 percent by certain entities and we propose to eliminate the requirements designed to help the Commission enforce that 50 percent ownership limitation. Nevertheless, the Commission proposes to retain a requirement that a QF provide in Form 556 ownership information including the percentage of ownership held by any electric utility or electric utility holding company, or by any person owned by either. While ownership limitations are no longer part of the criteria for QF status, the Commission nevertheless believes that an applicant for QF status should inform the Commission of the identity of its owners, and their percentage interests. The Commission believes that this information will help the Commission determine whether in the future, as it gains experience subsequent to the enactment of EPAct 2005, the exemptions from the FPA and state laws should continue to be available to all QFs, especially those affiliated with traditional utilities, transmission providers and other power producers. It will also allow the Commission to better monitor for undue discrimination or preference both in the provision of

[14] Ownership information provided in Form 556, discussed further below, would help the Commission to better monitor those circumstances where such sales may be more likely, *i.e.*, where the qualifying facility is affiliated with other market participants and where there may be an incentive for electric energy to be purchased by a QF and then resold to an affiliated traditional utility as QF-generated electric energy.

[15] *See, e.g., AEP Power Marketing, Inc.,* 107 FERC ¶ 61,018, *order on reh'g,* 108 FERC ¶ 61,026 (2004).

transmission service and sales for resale in interstate commerce. We ask commenters to provide comments addressing this matter.

Information Collection Statement

36. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[16] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission proposes amending its regulations to implement section 1253 of the EPAct 2005; specifically, its regulations governing qualifying small power production and cogeneration facilities and the exemptions available to qualifying facilities from the requirements of the FPA and PUHCA. The Commission's regulations, in 18 CFR Parts 131 and 292, specify the certification procedures that must be followed by small power production and cogeneration facilities seeking QF status; specify the criteria that must be met; specify the information which must be submitted to the Commission in order to obtain QF status; specify the benefits which are available to QFs; and specify the transaction obligations of electric utilities with respect to QFs. The information provided the Commission under Parts 131 and 292 is identified as Form 556.

37. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[17] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimate: The Public Reporting burden for the requirements proposed here are as follows:

Data Collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 556:				
FERC Certification	27	1	4	108
Public Utilities	270	1	38	10,260
Totals	297	1	38	10,388

Total Annual hours for Collection: (Reporting + recordkeeping, (if appropriate)) = 10,388 hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the costs to be: $3,488,800 (2080 total work hours in a year times $350) + $478,880 (Commission certification) = $3,967,680. Cost per respondent for self-certification is $12,921. (The hourly rate includes attorney fees, engineering consultation fees and administrative support.)

Title: FERC Form 556 ''Cogeneration and Small Power Production''.

Action: Proposed Collections.

OMB Control No: 1902–0075.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: This proposed rule, if adopted, would implement the Congressional mandate of the EPAct 2005 to implement the following: establishment of criteria for new qualifying cogeneration facilities; elimination of ownership limitations; and amending the exemptions available to QFs from the FPA and from PUHCA. By amending its regulations, the Commission is satisfying the statutory mandate and satisfying its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for energy customers. The information collected under 18 CFR Parts 131 and 292 is used by the Commission to determine whether an application for certification (Commission certification or self-certification) meets the criteria for a qualifying small power production facility or a qualifying cogeneration facility under its regulations and eligible to receive the benefits available to it under PURPA.

Internal review: The Commission has reviewed the requirements pertaining to qualifying small power production and cogeneration facilities and determined the proposed requirements are necessary to meet the statutory provisions of the EP Act 2005.

These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.* Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

Environmental Analysis

38. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this proposed rule is clarifying in nature. It interprets several amendments made to PURPA and to the FPA by EPAct 2005, and clarifies the applicability of these amendments to QFs; it does not substantially change the effect of the legislation. Accordingly, no environmental consideration is necessary.[19]

[16] 5 CFR 1320.13.

[17] 44 U.S.C. 3507(d).

[18] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[19] 18 CFR 380.4(a)(2)(ii).

Regulatory Flexibility Act Analysis

39. The Regulatory Flexibility Act of 1980 (RFA)[20] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. Many, if not most, QFs to which this rule would apply do not fall within the definition of small entities.[21] In addition, to the extent the proposed regulations remove now-unnecessary regulations such as ownership limitations for qualifying cogeneration and small power production facilities, the proposed regulations will be beneficial to QFs. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

Comment Procedures

40. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 8, 2005. Reply comments are due November 15, 2005. Comments and reply comments must refer to Docket No. RM05–36–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments and reply comments may be filed either in electronic or paper format.

41. Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments and reply comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

42. All comments and reply comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments and reply comments on other commenters.

Document Availability

43. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

44. From the Commission's Home Page on the Internet, this information is available in the the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

45. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects in 18 CFR Parts 131 and 292

Electric power, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 131 and 292, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

Subchapter K—Regulations Under the Public Utility Regulatory Policies Act of 1978

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 292.205, paragraph (d) is added to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

* * * * *

(d) *Criteria for new cogeneration facilities*—Notwithstanding paragraphs (a) and (b) of this section, any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to [the date the Commission issues a final rule], must also show:

(1) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner;

(2) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(3) Continuing progress in the development of efficient electric energy generating technology.

3. In § 292.601, paragraph (c) is revised to read as follows:

§ 292.601 Exemption of qualifying facilities from the Federal Power Act.

* * * * *

(c) *General Rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made pursuant to a state regulatory authority avoided-cost regime shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1–18, and 21–30 and sections 202(c), 210, 211, 212, 213, 214, 220, 221 and 222;

(3) Sections 305(c); and

(4) Any necessary enforcement provision of Part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed in paragraphs (c)(1), (2) (3) and (4) of this section.

4. In § 292.602, paragraph (b) is removed and paragraph (c) is

[20] 5 U.S.C. 601–12.

[21] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632.

redesignated as newly revised paragraph (b) to read as follows:

§ 292.602 Exemption of qualifying facilities from certain State law and regulation.

* * * * *

(b) Exemption from certain State laws and regulations.

(1) Any qualifying facility shall be exempted (except as provided in paragraph (b)(2)) of this section from state laws or regulations respecting:

(i) The rates of electric utilities; and

(ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from state laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular state law or regulation.

5. In § 292.203, paragraphs (a) and (b) are revised to read as follows:

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a); and

(2) Meets the fuel use criteria specified in § 292.204(b).

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable operating and efficiency standards specified in § 292.205(a) and (b).

(2) [Reserved]

* * * * *

§ 292.206 [Removed]

6. Section 292.206 is removed.

Subchapter D—Approved Forms, Federal Power Act and Public Utility Regulatory Policies Act of 1978

PART 131—FORMS

1. The authority citation for part 131 continues to read:

Authority: 16 U.S.C. 791a–825r. 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 131.80 is amended by revising paragraphs 1a, 1b, and 1c of Part A and by adding a new heading and paragraph 15 of Part C to read as follows:

§ 131.80 FERC Form No. 556, Certification of qualifying facility status for an existing or a proposed small power production or cogeneration facility.

(See § 292.207 of this chapter.)

FERC Form 556, OMB No. 1902–0075

Expires_____

Certification of Qualifying Facility Status for an Existing or a Proposed Small Power Production or Cogeneration Facility

(To be completed for the purpose of demonstrating up-to-date conformance with the qualification criteria of Section 292.203(a)(1) or Section 292.203(b), based on actual or planned operating experience)

General instructions: Part A of the form should be completed by all small power producers or cogenerators. Part B applies to small power production facilities. Part C applies to cogeneration facilities. All references to sections are with regard to Part 292 of Title 18 of the Code of Federal Regulations, unless otherwise indicated.

Part A—General Information To Be Submitted by All Applicants

1a. Full name:

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any: QF ____–____–____

Purpose of instant filing (self-certification or self-recertification [Section 292.207(a)(1)], or application for Commission certification or recertification [Sections 292.207(b) and (d)(2)]):

1b. Full address of applicant:

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

* * * * *

Part C—Description of the Cogeneration Facility

* * * * *

For New Cogeneration Facilities

15. For any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification under section 292.207 prior to [the date the Commission issues a final rule], also show:

(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner;

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) Continuing progress in the development of efficient electric energy generating technology.

[FR Doc. 05–20695 Filed 10–17–05; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AG10

Rules for the Issuance of Work Report Receipts, Payment of Benefits for Trial Work Period Service Months After a Fraud Conviction, Changes to the Student Earned Income Exclusion, and Expansion of the Reentitlement Period for Childhood Disability Benefits

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend our rules to reflect and implement sections 202, 208, 420A, and 432 of the Social Security Protection Act of 2004 (the SSPA). Section 202 of the SSPA requires us to issue a receipt each time you or your representative report a change in your work activity or give us documentation of a change in your earnings if you receive benefits based on disability under title II or title XVI of the Social Security Act (the Act). Section 208 changes the way we pay benefits during the trial work period if you are convicted by a Federal court of fraudulently concealing your work activity. Section 420A changed the law to allow you to become reentitled to childhood disability benefits under title II at any time if your previous entitlement to childhood disability benefits was terminated because of the performance of substantial gainful activity. Section 432 changes the way we decide if you are eligible for the student earned income exclusion. We also propose to change the SSI student policy to include home schooling as a form of regular school attendance. Additionally, we are proposing to apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent.

DATES: To be sure that your comments are considered, we must receive them by December 19, 2005.

ADDRESSES: You may give us your comments by: using our Internet facility (i.e., Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal: *http://www.regulations.gov:* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

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

FOR FURTHER INFORMATION CONTACT: Cindy Duzan, Policy Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–4203, or TTY (410) 966–5609 for information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number 1 (800) 772–1213 or TTY 1 (800) 325–0778. You may also contact Social Security Online, at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

What is the purpose of this notice of proposed rulemaking (NPRM)?

In this NPRM, we propose to amend our rules to reflect and codify sections 202, 208, 420A, and 432 of the SSPA. These proposed changes apply to you if you engage in work activity while entitled to or eligible for benefits based on disability under title II or title XVI of the Act.

We also propose to change the SSI student policy to include home schooling as a form of regular school attendance. This may allow more individuals to benefit from the student earned income exclusion. This change, which is separate from the changes being made to reflect and implement the SSPA, will make the title II and title XVI programs uniform with respect to home schooling. The title II program currently recognizes home schooling as a form of school attendance. We also propose to apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent.

When will we start to use these rules?

The effective date of the provisions of the SSPA that are the subject of these proposed rules are set forth below and will take effect on the dates mandated by statute. The changes regarding home schooling will not take effect until we evaluate the public comments we receive and issue final rules in the **Federal Register.** If we publish final rules, we will state in the notice the date on which they go into effect, explain in the preamble how we will apply them, and summarize and respond to the substantive public comments.

What is the purpose of section 202?

Section 202 of the SSPA requires us to issue a receipt to you or your representative each time you or your representative report a change in your work activity or give us evidence of a change in your earnings, such as your pay stubs, if you receive benefits based on disability under title II or title XVI of the Act. The law provides that we issue a receipt each time you or your representative report to us at least until we establish a centralized computer file that will electronically record the information about the change in your work activity and the date that you make your report. After the centralized computer file is implemented, we will continue to issue receipts to you upon your request.

In the past, the reports you gave to us about your work activity may not have been processed timely, resulting in processing delays. This might have caused us to pay benefits to you incorrectly, without considering the effect your work and earnings may have had on your benefits, causing you to become overpaid. We are implementing a new centralized computer system which will create an electronic record of the work information that you report to us. This will help us ensure that we fulfill our responsibility to process your earnings reports and pay benefits to you correctly. We expect this centralized computer system to be operational in the fall of 2005. Issuing a receipt to you when you report your work or earnings will provide you with proof that you properly fulfilled your responsibility to report your earnings to us until such time as the electronic record is established.

Why must you report your work activity?

If you receive benefits based on disability under title II of the Act or are eligible for benefits under title XVI, you are required to report changes in your work activity and earnings to us. (See §§ 404.1588 and 416.708.)

Your earnings can affect your eligibility for benefits or the amount of your benefits.

You can report your work to us:

- By phone to our toll free number;
- In person or by phone to your local office; or
- By mailing your pay stubs to your local office.

We are also making efforts to expand the ways you can report information to us.

What is the effective date of section 202?

The statutory change that requires us to issue receipts every time you or your representative report a change in your work activity or give us documentation of a change in your earnings is effective as soon as possible, but no later than March 2, 2005. We are currently issuing receipts to you or your representative and will continue to do so at least until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

What is the purpose of section 208?

Section 208 of the SSPA provides that if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period, no benefits are payable for any trial work period service month (generally a month of work activity, see § 404.1592) that occurred on or after March 2004 and before the date of your conviction. Section 208 of the SSPA will help to deter fraud within the Social Security program by prohibiting payment for trial work period service months to disabled individuals who fraudulently conceal work activity.

What is the trial work period?

The trial work period allows a title II beneficiary to test his or her ability to work for at least 9 months and still be considered disabled. During your trial work period, you continue to be entitled to receive your Social Security disability insurance benefits regardless of how high your earnings might be so long as you continue to have a disabling impairment. The trial work period continues until you accumulate 9 months (not necessarily consecutive) in which you performed ''services'' (i.e., work activity) within a rolling 60-consecutive-month period. We use this ''services'' rule to count trial work

period months. Under section 222(c)(2) of the Act and § 404.1592(b) of the regulations, services means any activity (whether legal or illegal), which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally use earnings guidelines to evaluate whether the work activity you are performing as an employee or self-employed person is services for the trial work period. We consider your work in a particular month to be services if you earn more than $590 in that month for the year 2005, or work more than 80 self-employed hours in that month. The dollar amount can be adjusted each year based on the national average wage.

What is the effective date of section 208?

The statutory change provides that an individual is not entitled to receive title II disability benefits for trial work period service months that occur on or after March 2004 and before the date of conviction by a Federal court of fraudulently concealing work activity during that trial work period.

What is the purpose of section 420A?

Section 420A of the SSPA provides that, if your previous entitlement to childhood disability benefits under title II of the Act ended due to the performance of substantial gainful activity, you may become reentitled to childhood disability benefits at any time if you become disabled again and you meet other requirements for entitlement. Prior to the effective date of section 420A, if childhood disability benefits were terminated because disability ceased, you could become reentitled to benefits only if you became disabled again within 7 years of the most recent termination. Section 420A removes a significant disincentive to work for childhood disability beneficiaries by removing the 7-year restriction on reentitlement for individuals whose entitlement to childhood disability benefits was terminated due to the performance of substantial gainful activity. The 7-year restriction continues to apply to beneficiaries whose previous entitlement to childhood disability benefits terminated because of medical improvement.

What is the effective date of section 420A?

The statutory change that removed the 7-year restriction on reentitlement to childhood disability benefits under title II of the Act if the previous entitlement terminated due to the performance of substantial gainful activity became effective with respect to benefits payable for months beginning October 2004.

What is the purpose of section 432?

Section 432 of the SSPA changes who is eligible for the student earned income exclusion under title XVI of the Act. The law increases the number of persons eligible for the exclusion by eliminating the requirement that you must meet the definition of a child under our SSI rules to be eligible for this exclusion. Specifically, section 432 of the SSPA removes the restriction that you must be unmarried and not head of your own household to qualify. You no longer need to be considered a ''child'' to get the student earned income exclusion, you only must be under the age of 22, and, as before, regularly attending a school, college, or university, or a course of vocational or technical training to prepare for gainful employment.

What is the student earned income exclusion?

The student earned income exclusion is a provision that allows us to exclude a greater amount of your earned income if you are a student than we do under our usual income counting rules. If you meet the definition of child for SSI and you are regularly attending school, we exclude a greater amount of your earned income when determining your eligibility for, and the amount of, benefits. For the year 2005, we do not count up to $1,410 of earned income per month up to a maximum yearly exclusion of $5,670. These dollar amounts are adjusted each year by the cost-of-living adjustment (COLA) that is used to adjust the SSI Federal Benefit Rate. Section 432 eliminates the requirement that you meet the definition of a child to be eligible for the student earned income exclusion.

Who can use the student earned income exclusion for the period before April 1, 2005?

Before April 1, 2005, (that is, before the changes made by section 432), you could have qualified for the student earned income exclusion if you were:

- Under age 22;
- Unmarried;
- Not head of your own household; and
- Regularly attending school, college, or university, or a course of vocational or technical training designed to prepare you for gainful employment.

Section 416.1861 currently provides that you are a student regularly attending school or college, or training that is designed to prepare you for a paying job, if you are enrolled for one or more courses of study and attend class (1) in a college or university for at least 8 hours a week under a semester or quarter system, (2) in grades 7–12 for at least 12 hours a week, or (3) in a course of training to prepare for a paying job, and attending that training for at least 15 hours a week if the training involves shop practice or 12 hours a week if it does not involve shop practice. These rules do not specifically address home schooling as a form of regular school attendance. However, § 404.367 currently recognizes as full-time school attendance students who are instructed at home in accordance with a home school law of the State or other jurisdiction in which they reside.

How do section 432 and the revision regarding home schooling change the student earned income exclusion?

Section 432 of the SSPA eliminates the requirement that you must be a child to qualify for the student earned income exclusion. Specifically, it removes the requirement that you must be unmarried and not head of your own household.

These proposed rules regarding home schooling would allow you to be considered a student regularly attending school if you are instructed at home in grades 7–12 for at least 12 hours a week in accordance with a home school law of the State or other jurisdiction in which you live. Allowing home schooling as a form of regular school attendance would make the title II and title XVI programs uniform with respect to home schooling. We hope that our proposed rule change to consider home schooling, and the statute's removal of the child requirement, will increase the number of persons who can use the student earned income exclusion.

Will the student earned income exclusion apply to deemors?

Yes. Section 1614(f) of the Act requires that when we determine an individual's eligibility for SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household, or, in the case of a child under the age of 18, the income and resources of an ineligible parent living in the same household. We use the term ''deeming'' to describe this process of considering part of an ineligible spouse's or parent's income and resources to be the individual's own income and resources. Deeming an ineligible parent's income and resources to a child eligible for SSI benefits is only done if the child is under age 18 and the child is living in the same household as the ineligible parent. Section 1614(f) also grants the Commissioner the

discretion to not deem the income and resources of an ineligible spouse or parent to an eligible individual when the Commissioner determines that deeming would be inequitable under the circumstances.

In addition to adding to our regulations the change in how we determine an eligible individual's income required by section 432 of the SSPA, we propose to apply this earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent who is a student.

Extending this student earned income exclusion to the deeming process, as authorized by section 1614(f) of the Act, is consistent with the SSI program's longstanding treatment of income and resources of spouses and parents comparably to the way that income and resources of an eligible individual would be treated. It will also provide incentives to encourage work and education to ineligible individuals living with beneficiaries.

What is the effective date of section 432 and the revision regarding home schooling?

The statutory changes that allow those who are married and the head of a household to also qualify for the student earned income exclusion are effective with benefits payable April 1, 2005. The changes to allow home schooling as a form of regular school attendance will be effective 30 days after publication of the final rules.

Explanation of Changes

We propose to revise several of our rules in subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 to:

- Reflect the statutory change that requires us to issue receipts to you or your representative when you or your representative report changes in your work activity or earnings or give us documentation of those changes at least until we establish a centralized computer file to record the information you report to us and the date you report;
- Explain that disability benefits are not payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during that trial work period;
- Reflect the statutory change that expands the number of persons who can use the student earned income exclusion by removing the requirement that you must be a child, unmarried and not head of household;
- Expand the number of persons who can use the student earned income exclusion by allowing home schooling as a form of regular school attendance;
- Extend application of the student earned income exclusion to the income of an ineligible spouse and ineligible parent for deeming purposes; and
- Reflect the statutory change that eliminates the 7-year time limit on reentitlement to childhood disability benefits when the prior entitlement terminated due to the performance of substantial gainful activity.

The following is an explanation of the specific changes we are proposing and our reasons for making these proposals.

Section 404.351 Who May Be Reentitled to Child's Benefits

We are proposing to add a new paragraph (d) to explain that, effective with respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at any time if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity.

Section 404.401a When We Do Not Pay Benefits Because of a Disability Beneficiary's Work Activity

We are proposing to revise the last sentence in current § 404.401a to clarify that earnings from work activity during a trial work period will not stop benefits except as provided in § 404.471.

Section 404.471 Nonpayment of Disability Benefits for Trial Work Period Service Months Upon a Conviction of Fraudulently Concealing Work Activity

We are proposing to add a new § 404.471 to explain that disability benefits will not be payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period. As explained in § 404.1592, the trial work period is a period during which you may test your ability to work and still continue to receive disability benefits if you still have a disabling impairment, no matter how much you are earning. Under this proposed change, which reflects section 208 of the SSPA of 2004, if you are convicted in Federal court of fraudulently concealing your work activity during your trial work period, disability benefits are not payable for any trial work period service months beginning March 2004 that occur prior to that conviction. Benefits already received that are determined not payable because of the Federal court decision are considered an overpayment on the record. Consistent with section 208, we explain in § 404.471(b) what is meant by fraudulently concealing work activity. You can be found to be fraudulently concealing work activity if you provide false information concerning the amount of your earnings, engage in work activity under another identity while receiving disability benefits, or take actions to conceal your work activity with the intent of obtaining benefits in excess of amounts due.

Section 404.903 Administrative Actions That Are Not Initial Determinations

We are proposing to add a new paragraph (x) to § 404.903 to explain that the receipt we give you or your representative as a result of a report of a change in your work activity or earnings is not an initial determination. As explained in existing § 404.903, administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of part 404, and they are not subject to judicial review. The receipt will summarize the information that you give us, and we will ask you to review the information contained in the receipt for accuracy and to tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we determine that you are not now disabled based on what you told us about your work activity, as explained in § 404.1595.

Section 404.1588 Your Responsibility To Tell Us of Events That May Change Your Disability Status

We are proposing to designate the undesignated current paragraph as paragraph (a) and add a title: *Your responsibility to report changes to us,* and redesignate paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4). We also propose to add a new paragraph (b), *Our responsibility when you report your work to us,* that clarifies how we will respond when you or your representative report a change in your work activity to us. Section 404.1588(a) explains that if you receive benefits based on disability, you must report to us when there is a change in your work activity; for example, you return to work, or there is an increase in your earnings or the amount of work you are doing. New paragraph (b) explains that we will issue a receipt to you or your representative when you or your representative report a change in your work activity or earnings, until a centralized computer file that records

the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we may continue to issue receipts to you or your representative if you request us to do so.

Section 404.1592 The Trial Work Period

In § 404.1592 we are proposing to add a new paragraph (f), *Nonpayment of benefits for trial work period service months,* to clarify that benefits will not be payable for trial work period service months if you have been convicted by a Federal court of fraudulently concealing your work activity. We also added a cross-reference to new § 404.471.

Section 416.708 What You Must Report

We are proposing to amend the last paragraph of paragraph (c) by adding two new sentences to explain how we will respond when you report a change in your earned income. Section 416.708 (c) explains that if you receive SSI benefits, you must report to us when there is a change in your income. The proposed new sentences which would be added to paragraph (c) explain that if you receive SSI benefits based on disability, we will issue a receipt to you or your representative when you or your representative report a change in your work activity or your earned income, at least until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

Section 416.1112 Earned Income We Do Not Count

We are proposing to amend paragraph (c)(3) to reflect the statutory change eliminating the requirement that you must be a child to qualify for the student earned income exclusion.

Section 416.1161 Income of an Ineligible Spouse, Ineligible Parent, and Essential Person for Deeming Purposes

We are proposing to amend § 416.1161 by adding a new paragraph (a)(27) to exclude certain earned income of a student as provided by section 432 from the income of an ineligible spouse and ineligible parent for deeming purposes.

Section 416.1403 Administrative Actions That Are Not Initial Determinations

We are proposing to add a new paragraph (a)(22) to § 416.1403 to explain that the receipt we give you or your representative as a result of your report of work activity or earnings is not an initial determination. As explained in § 416.1403(a), administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N, and they are not subject to judicial review. The receipt will summarize the information that you or your representative give us and we will ask you to review the information contained in the receipt for accuracy and tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we suspend or reduce your benefit amount based on what you told us about your earnings as explained in § 416.1336.

Section 416.1861 Deciding Whether You Are a Child: Are You a Student?

We are proposing to add a new paragraph (b) to § 416.1861 to add home schooling conducted in accordance with a home school law of the State or other jurisdiction in which you live as a form of regular school attendance for purposes of title XVI. We are proposing to redesignate paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g). We also are proposing to amend current paragraph (e) to remove references to earnings because we discuss student earnings in a new section.

We are proposing to add a new undesignated centered heading to read, Who is Considered A Student For Purposes of The Student Earned Income Exclusion.

Section 416.1870 Effect of Being Considered a Student

We are proposing to add a new § 416.1870 to explain that if we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount.

Section 416.1872 Who Is Considered a Student

We are proposing to add a new § 416.1872 to explain that we consider you to be a student if you are under 22 years old and you are regularly attending school or college or training that is designed to prepare you for a paying job.

Section 416.1874 When We Need Evidence That You Are a Student

We are proposing to add a new § 416.1874 to explain what evidence we need if you are a student and you expect to earn over $65 in any month.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

Section	Annual number of responses	Frequency of response	Average burden per response (in minutes)	Estimated annual burden (in hours)
404.1588(a)				1
416.708				1
416.1861(f)	15,000	1	10	2500
Total	15,000			2500

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/numbers: Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530, Fax Number: 202–395–6974. Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 11, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD–AGE SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.351 is amended by removing ''; or'' at the end of paragraph (b) and replacing it with a period; removing the period at the end of paragraph (c) and replacing it with ''; or'', and adding a new paragraph (d) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

* * * * *

(d) The first month on or after October 2004 you are under a disability that began after the end of the 84th month following the month in which your entitlement to benefits had ended because your previous disability ended due to the performance of substantial gainful activity.

Subpart E—[Amended]

3. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 425, 902(a)(5), and 1320a–8a and 48 U.S.C. 1801).

4. Section 404.401a is amended by revising the last sentence to read as follows:

§ 404.401a When we do not pay benefits because of a disability beneficiary's work activity.

* * * Except as provided in § 404.471, earnings from work activity during a trial work period will not stop your benefits.

5. Add a new § 404.471 to read as follows:

§ 404.471 Nonpayment of disability benefits for trial work period service months upon a conviction of fraudulently concealing work activity.

(a) *Nonpayment of benefits during the trial work period.* Beginning with work activity performed in March 2004 and thereafter, if you are convicted by a Federal court of fraudulently concealing your work activity and the concealment of the work activity occurred while you were in a trial work period, monthly disability benefits under title II of the Social Security Act are not payable for months in which you performed services during that trial work period prior to the conviction (see § 404.1592 for a definition of a trial work period and services). Benefits already received for months of work activity in the trial work period prior to the conviction and in the same period of disability during which the fraudulently concealed work activity occurred, will be considered an overpayment on the record.

(b) *Concealment of work activity.* You can be found to be fraudulently concealing work activity if—

(1) You provide false information to us concerning the amount of earnings you received or are receiving for a particular period;

(2) You received or are receiving disability benefits while engaging in work activity under another identity (this would include working under another Social Security number or a forged Social Security number); or

(3) You take other actions to conceal work activity with the intent of fraudulently obtaining benefits in excess of amounts that are due.

Subpart J—[Amended]

6. The authority citation for subpart J is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the

Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

7. Section 404.903 is amended by removing the word ''and'' at the end of paragraph (v), replacing the period at the end of paragraph (w) with ''; and'', and adding a new paragraph (x) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(x) Issuing a receipt in response to your report of a change in your work activity.

Subpart P—[Amended]

8. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

9. Section 404.1588 is revised to read as follows:

§ 404.1588 Your responsibility to tell us of events that may change your disability status.

(a) *Your responsibility to report changes to us.* If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

(1) Your condition improves;

(2) You return to work;

(3) You increase the amount of your work; or

(4) Your earnings increase.

(b) *Our responsibility when you report your work to us.* When you or your representative report changes in your work activity to us under paragraphs (a)(2), (a)(3), and (a)(4) of this section, we will issue a receipt to you or your representative, at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

10. Section 404.1592 is amended by adding a new paragraph (f) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(f) *Nonpayment of benefits for trial work period service months.* See § 404.471 for an explanation of when benefits for trial work period service months are not payable if you are convicted by a Federal court of fraudulently concealing your work activity.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart G—[Amended]

11. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note)

12. Section 416.708 (c)(4) and the paragraph following (c)(4) are revised to read as follows:

§ 416.708 What you must report.

* * * * *

(c) * * *

(4) An ineligible child who lives with you.

Note to paragraph (c): However, you need not report an increase in your Social Security benefits if the increase is only a cost-of-living adjustment. (For a complete discussion of what we consider income, see subpart K. See subpart M, § 416.1323 regarding suspension because of excess income.) If you receive benefits based on disability, when you or your representative report changes in your earned income, we will issue a receipt to you or your representative until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

* * * * *

Subpart K—[Amended]

13. The authority citation for subpart K continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

14. Section 416.1112 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) * * *

(3) If you are under age 22 and a student who is regularly attending school as described in § 416.1861:

* * * * *

15. Section 416.1161 is amended by adding a new paragraph (a)(26) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(26) Earned income of a student as described in § 416.1112(c)(3).

* * * * *

Subpart N—[Amended]

16. The authority citation for subpart N is revised to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

17. Section 416.1403 is amended by removing the word ''and'' at the end of paragraph (a)(20), replacing the period at the end of paragraph (a)(21) with ''; and'', and adding new paragraph (a)(22) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(22) Issuing a receipt in response to your report of a change in your earned income.

* * * * *

Subpart R—[Amended]

18. The authority citation for subpart R is revised to read as follows:

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c (b), (c), and (d) and 1383 (d)(1) and (e)).

19. Section 416.1861 is amended by redesignating paragraphs (b), (c), (d), (e) and (f) as (c), (d), (e), (f) and (g), and revising newly redesignated paragraph (f), and adding a new paragraph (b) to read as follows:

§ 416.1861 Deciding whether you are a child: Are you a student?

* * * * *

(b) *If you are instructed at home.* You may be a student regularly attending school if you are instructed at home in grades 7–12 for at least 12 hours a week in accordance with a home school law of the State or other jurisdiction in which you reside.

* * * * *

(f) When we need evidence that you are a student. We need evidence that you are a student if you are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student.

* * * * *

20. Add a new undesignated centered heading and § 416.1870 to read as follows:

Who Is Considered a Student for Purposes of the Student Earned Income Exclusion

§ 416.1870 Effect of being considered a student.

If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. If you are an ineligible spouse, ineligible parent or an essential person for deeming purposes and we consider you to be a student, we will not count all of your income when we determine how much of your income to deem. Section 416.1110 tells what we mean by earned income. Section 416.1112(c)(3) tells how much of your earned income we will not count. Section 416.1161(a)(27) explains how the student earned income exclusion applies to deemors.

21. Add a new § 416.1872 to read as follows:

§ 416.1872 Who is considered a student.

We consider you to be a student if you are under 22 years old and you regularly attend school or college or training that is designed to prepare you for a paying job as described in § 416.1861(a) through (e).

22. Add a new § 416.1874 to read as follows:

§ 416.1874 When we need evidence that you are a student.

We need evidence that you are a student if you are under age 22 and you expect to earn over $65 in any month. Section 416.1861(g) explains what evidence we need.

[FR Doc. 05–20803 Filed 10–17–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 517

RIN 3141–AA21

Freedom of Information Act Procedures

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to propose to amend the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Freedom of Information Act (FOIA), as amended so that the Commission will be in compliance with the provisions of the amendment.

DATES: Written comments on this proposed rule must be received by November 17, 2005.

ADDRESSES: Comment may be mailed to the National Indian Gaming Commission, FOIA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to (202) 632–7066 (this is not a toll free number). Comments may be inspected between 9 a.m. and noon and between 2 p.m. and 5 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeannie McCoy at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Congress enacted the FOIA in 1966 and last modified it with the Electronic Freedom of Information Act Amendments of 1996. This amendment addresses FOIA reading rooms and those documents available electronically, agency backlogs of requests, change in fees, and preservation of records among other things. The proposed changes will bring the Commission in compliance with the FOIA, as amended.

Regulatory Flexibility Act: The Commission certifies that the 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.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that could be deemed impacts within the scope of the Act. For this reason, the Commission has concluded that the proposed rule will not have a significant impact on those small entities subject to the rule.

Unfunded Mandates Reform Act: The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* Furthermore, this proposal will not have a unique effect on tribal governments.

Small Business Regulatory Enforcement Fairness Act: The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than $100 million per year; 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 U.S. based enterprises.

Paperwork Reduction Act: The proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act: The Commission has determined that this proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: October 7, 2005.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 517

Freedom of information.

Accordingly for the reasons set forth above, 25 CFR part 517 is proposed to be revised to read as follows:

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.
517.1 General provisions.
517.2 Public Reading Room.
517.3 Definitions.
517.4 Requirements for making requests.
517.5 Responsibility for responding to requests.
517.6 Timing of responses to requests.
517.7 Confidential commercial information.
517.8 Appeals.
517.9 Fees.

The authority citation continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

§ 517.1 General provisions.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended. These regulations provide procedures by

which you may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by the Commission.

§ 517.2 Public Reading Room.

Records that are required to be maintained by the Commission shall be available for public inspection and copying at 1441 L Street, NW., Suite 9100 Washington, DC. Reading room records created on or after November 1, 1996, shall be made available electronically via the Web site.

§ 517.3 Definitions.

(a) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records provided to the government by a submitter that arguably contains material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* mean those expenditures by the Commission actually incurred in searching for and duplicating records in response to the FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of space, heating, or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a document necessary to fulfill the FOIA request. Such copies can take the form of, among other things, paper copy, microfilm, audio-visual materials, or machine readable documentation. The copies provided shall be in a form that is reasonably usable by the requester.

(e) *Educational institution*. refers to a preschool, a public or private elementary or secondary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is used in paragraph (a) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(h) *Record* means all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by the Commission under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Commission or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. For a ''freelance journalist'' to be regarded as working for a news organization, the requester must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent such showing, the requester may provide documentation establishing the requester's past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

(j) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(k) *Review* means the process of examining a record in response to a FOIA request to determine if any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 517.7 (c). Review time does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(l) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(m) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(n) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 517.4 Requirements for making requests.

(a) *How to make a FOIA request.* Requests for records made pursuant to the FOIA must be in writing. Requests should be sent to the National Indian Gaming Commission, Attn: FOIA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Requests may be mailed, dropped off in person, or faxed to (202) 632–7066 (not a toll free number). If the requester is making a

request for records about himself/herself, the requester should see 25 CFR 515.3 for additional information. If the requester is making a request for records about another individual, the requester must provide either a written authorization signed by that individual authorizing disclosure of the records to the requester or provide proof that the individual is deceased (for example, a copy of the death certificate or a copy of the obituary).

(b) *Description of records sought.* Requests for records shall describe the records requested with as much specificity as possible to enable Commission employees to locate the information requested with a reasonable amount of effort.

(c) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information, or a request for a waiver or reduction of fees. If the requester is requesting a waiver or reduction of fees the requester must include justification for such waiver or reduction (see § 517.9 (c) for more information). If the request for a fee waiver is denied, the requester will be notified of this decision and advised that fees associated with the processing of the request will be assessed. The requester must send an acknowledgment to the FOIA Officer indicating his/her willingness to pay the fees. Absent such acknowledgment within the specified time frame, the request will be considered incomplete, no further work shall be done, and the request will be administratively closed.

(d) *Types of records not available.* The FOIA does not require the Commission to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or disposed.

§ 517.5 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the FOIA Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer shall make initial determinations either to grant or deny in whole or in part a request for records.

(c) *Consultations and referrals.* (1) When a requested record has been created by another Federal Government agency that record shall be referred to the originating agency for direct response to the requester. The requester shall be informed of the referral. As this is not a denial of a FOIA request, no appeal rights accrue to the requester.

(2) When a requested record is identified as containing information originating with another Federal Government agency, the record shall be referred to the originating agency for review and recommendation on disclosure.

§ 517.6 Timing of responses to requests.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The FOIA Officer may use multi-track processing in responding to requests. Multi-track processing means placing simple requests requiring rather limited review in one processing track and placing more voluminous and complex requests in one or more other tracks. Request in either track are processed on a first-in/first-out basis.

(2) The FOIA Officer may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of faster track(s). The FOIA Officer will do so either by contacting the requester by letter or telephone, whichever is more efficient in each case.

(c) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and notify the requester within twenty (20) working days after receipt of the request. This 20 day period may be extended if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (c)(1) of this section, the FOIA Officer shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made. The requester will then have the opportunity to modify the request or arrange for an alternative time frame for completion of the request.

(3) If the FOIA Officer has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Multiple requests involving unrelated matters will not be aggregated.

(4) If no initial determination has been made at the end of the 20 day period provided for in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(5) If the FOIA Officer determines that another agency is responsible for the records, the FOIA Officer shall refer such records to the appropriate agency for direct response to the requester. The FOIA Officer shall inform the requester of the referral and of the name and address of the agency or agencies to which the request has been referred.

(d) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, the FOIA Officer shall notify the requester in writing and provide copies of the requested records in whole or in part once any fees charged under § 517.9 have been paid in full. Records disclosed in part shall be marked or annotated to show the exemption applied to the withheld information and the amount of information withheld unless to do so would harm the interest protected by an applicable exemption. If a requested record contains exempted material along with nonexempt material, all reasonable segregable material shall be disclosed.

(e) *Denial of requests.* When the FOIA Officer determines that access to requested records should be denied, the FOIA Officer shall notify the requester of the denial, the grounds for the denial, and the procedures for appeal of the denial.

(f) *Expedited processing of request.* The FOIA Officer must determine whether to grant the request for expedited processing within (10) calendar days of its receipt. Requests will receive expedited processing if one

of the following compelling needs is met:

(1) The requester can establish that failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

§ 517.7 Confidential commercial information.

(a) *Notice to submitters.* The FOIA Officer shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the FOIA Officer, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The FOIA Officer shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *Where notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The FOIA Officer shall afford a submitter a reasonable period of time to provide the FOIA Officer with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. In the event a submitter fails to respond to the notice in the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is received after the disclosure decision has been made will not be considered. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specific disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* If the requester files a lawsuit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action. If a submitter files a lawsuit seeking to prevent disclosure of confidential commercial information, the FOIA Officer shall notify the requester.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed pursuant to Exemption 4 and/or any other exemption of the FOIA;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

§ 517.8 Appeals.

(a) *Right of appeal.* The requester has the right to appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.* (1) *Time for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access or after the time limit for response by the FOIA Officer has expired. Prior to submitting an appeal any outstanding fees associated with FOIA requests must be paid in full.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and initial denial. To expedite the appellate process and give the requester an opportunity to present his/her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial to have been in error. The appeal shall be addressed to the National Indian Gaming Commission, Attn: FOIA Appeals Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination and his/her right to obtain judicial review in the appropriate Federal district court.

§ 517.9 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where

the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Payment of fees should be by check or money order made payable to the Treasury of the United States.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Copies.* The FOIA Officer shall charge $0.15 per page for copies of documents up to 8 ½ × 14. For copies prepared by computer, the FOIA Officer will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the FOIA Officer shall charge the actual costs of producing the documents.

(2) *Searches.* (i) Manual searches. Whenever feasible, the FOIA Officer will charge at the salary rate (basic pay plus a percent for benefits) of the employee or employees performing the search. However, where a homogenous class of personnel is used exclusively in a search (e.g. all administrative/clerical or all professional/executive), the FOIA Officer shall charge $4.45 per quarter hour for clerical time and $7.75 per quarter hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The FOIA Officer will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. The Commission is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the FOIA Officer analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraph (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) The subject of the request. Whether the subject of the requested records concerns the operations or activities of the government;

(2) The informative value of the information to be disclosed. Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure. Whether disclosure of the requested information will contribute to public understanding;

(4) The significance of the contribution to public understanding. Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) The existence and magnitude of commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) The primary interest in disclosure. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutional requesters; representative of the news media; and all other requesters. These terms are defined in § 517.3. The following specific levels of fees are prescribed for each of these categories:

(1) Commercial use requesters. The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) Educational and non-commercial scientific institution requesters. The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) News media requesters. The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) All other requesters. The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total costs exceeds $15.00, except that the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer shall determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Charges for unsuccessful searches.* Ordinarily, no charges will be assessed when requested records are not found or when records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the 31st day following the day on which the bill was sent to you. A fee received by the FOIA Officer, even if not processed, will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982, as amended, and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed $250.00. When payment is required in advance of the processing of a request, the time limits prescribed in Sec. 517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed $25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than $25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requester an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–114371–05]

RIN 1545–BE43

Disregarded Entities; Employment and Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under which qualified subchapter S subsidiaries and single-owner eligible entities that currently are disregarded as entities separate from their owners for federal tax purposes would be treated as separate entities for employment tax and related reporting requirement purposes. These regulations also propose to treat such disregarded entities as separate entities for purposes of certain excise taxes reported on Forms 720, 730, 2290, and 11–C; excise tax refunds or payments claimed on Form 8849; and excise tax registrations on Form 637. These proposed regulations would affect disregarded entities and the owners and employees of disregarded entities in the payment and reporting of federal employment taxes. These regulations also would affect disregarded entities and their owners in the payment and reporting of certain Federal excise taxes and in registration and claims related to certain Federal excise taxes.

DATES: Written or electronic comments and requests for a public hearing must be received by January 17, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114371–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–114371–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–114371–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Richards at (202) 622–6040 (on the employment tax provisions) or Susan Athy at (202) 622–3130 (on the excise tax provisions); concerning the submission of comments or requests for a hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

1. Disregarded Entities

Under the Internal Revenue Code (Code) and its regulations, qualified subchapter S subsidiaries (QSubs) (under section 1361(b)(3)(B)) and certain single-owner eligible entities (under §§ 301.7701–1 through 301.7701–3 of the Procedure and Administration Regulations) are disregarded as entities separate from their owners (''disregarded entities''). The disregarded entity rules of section 1361(b)(3)(A) and §§ 301.7701–1 through 301.7701–3 apply for all purposes of the Code, including employment and excise taxes.

2. Employment Taxes

Employers are required to deduct and withhold income and Federal Insurance Contributions Act (FICA) taxes from their employees' wages under sections 3402(a) and 3102(a), and are separately liable for their share of FICA taxes as well as for Federal Unemployment Tax Act (FUTA) taxes under sections 3111 and 3301 (the withholding, FICA and FUTA taxes are collectively referred to herein as employment taxes). Sections 3403, 3102(b), 3111, and 3301 provide that the employer is the person liable for the withholding and payment of employment taxes. In addition, the employer is required to make timely tax deposits, file employment tax returns, and issue wage statements (Forms W–2) to employees (collectively, other employment tax obligations). An employer is generally defined as the person for whom an individual performs services as an employee. Sections 3401(d), 3121(d), and 3306(a). Because a disregarded entity is not recognized for Federal tax purposes, the owner of the disregarded entity is treated as the employer for purposes of employment tax liabilities and all other employment tax obligations related to wages paid to employees performing services for the disregarded entity.

If an entity is disregarded for Federal tax purposes under section 1361(b)(3)(A) or §§ 301.7701–1 through 301.7701–3, Notice 99–6 (1999–1 C.B. 321) provides that employment taxes and other employment tax obligations with respect to employees performing services for the disregarded entity may be satisfied in one of two ways: (1) Calculation and payment of all employment taxes and satisfaction of all other employment tax obligations with respect to employees performing services for the disregarded entity by its owner under the owner's name and employer identification number (EIN); or (2) separate calculation and payment of all employment taxes and satisfaction of all other employment tax obligations by the disregarded entity with respect to employees performing services for the disregarded entity by the disregarded entity under its own name and EIN. The notice states that ultimate liability for employment taxes remains with the owner of the disregarded entity regardless of which alternative is chosen.

3. Excise Taxes

A. Liability for Excise Taxes

Liability for federal excise taxes is imposed on certain transactions and activities under the following chapters of the Internal Revenue Code (Code).

Chapter 31 imposes retail excise taxes on the sale or use of special fuels (section 4041); the use of fuel in commercial transportation on inland waterways (section 4042); and the sale of heavy trucks and trailers (section 4051).

Chapter 32 imposes manufacturers excise taxes on the sale of gas guzzler automobiles (section 4064); the sale of highway-type tires (section 4071); the removal, entry, or sale of taxable fuel

(section 4081); the sale of coal (section 4121); the sale of vaccines (section 4131); and the sale of sporting goods (section 4161).

Chapter 33 imposes excise taxes on payments for communications facilities and services (section 4251); payments for transportation of persons by air (section 4261); and payments for transportation of property by air (section 4271).

Chapter 34 imposes excise taxes on policies issued by foreign insurers (section 4371).

Chapter 35 imposes excise taxes on wagers (sections 4401 and 4411).

Chapter 36 imposes excise taxes on transportation by water (section 4471) and the use of heavy highway vehicles (section 4481).

Chapter 38 imposes excise taxes on the sale of ozone-depleting chemicals and imported taxable products (section 4681).

The IRS does not administer, and these regulations have no effect on the chapter 32 tax on firearms (section 4181) or the chapter 36 tax on port use (section 4461).

B. Excise Tax Registration

A person may be required to register with the IRS for certain excise tax purposes. Registration may be required under section 4101 with respect to the taxes imposed on motor fuels or under section 4412 in the case of persons subject to the occupational tax on wagering. In addition, section 4222 generally permits sales for certain exempt purposes to be made on a tax-free basis only if the sellers and purchasers are registered.

C. Excise Tax Credits, Refunds, and Payments

The Code allows excise taxpayers to claim credits or refunds for overpayments, including overpayments determined under sections 4081(e), 6415, 6416, and 6419 (section 6402). The Code generally allows non-excise taxpayers to claim credits or payments for fuels used for nontaxable purposes (sections 6420, 6421, and 6427) and allows blenders to claim credits or payments for the production of alcohol and biodiesel mixtures (sections 6426 and 6427(e)). Section 34 provides an income tax credit for amounts payable for the nontaxable use of fuels under sections 6420, 6421, and 6427, if these amounts have not been previously claimed, and section 38 provides an income tax credit (general business credit) for alcohol or biodiesel used as a fuel (under sections 40 and 40A).

4. Reason for Change

Administrative difficulties have arisen from the interaction of the disregarded entity rules and the federal employment tax provisions. Problems have arisen for both taxpayers and the IRS with respect to reporting, payment and collection of employment taxes, particularly where state employment tax law also sets requirements for reporting, payment and collection that may be in conflict with the federal disregarded entity rules. The Treasury Department and the IRS believe that treating the disregarded entity as the employer for purposes of federal employment taxes will improve the administration of the tax laws and simplify compliance.

Difficulties also have arisen from the interaction of the disregarded entity rules and certain federal excise tax provisions. Many of these provisions rely on state law, rather than federal law, to determine liability for an excise tax, attachment of a tax, and allowance of a credit, refund, or payment. For example, § 48.0–2(b) of the Manufacturers and Retailers Excise Tax Regulations provides that such excise taxes attach when title to an article passes to the purchaser. In general, determining when title passes depends on the intention of the parties. Absent express intention, however, the laws of the jurisdiction where the sale is made govern this determination. Such a determination is required also in applying certain excise tax credit, refund, and payment provisions that allow claims by ultimate purchasers, ultimate vendors, and producers.

Explanation of Provisions

These proposed regulations would treat QSubs and single-owner eligible entities that are disregarded entities for Federal tax purposes as separate entities for purposes of employment taxes and other requirements of law arising under subtitle C of the Code, certain excise taxes, and the application of the rules under subtitle F of the Code relating to matters such as reporting, assessment, collection, and refunds regarding employment and certain excise taxes. Under the proposed regulations, these entities generally would continue to be treated as disregarded entities for other federal tax purposes.

1. Employment Taxes

The proposed regulations would eliminate disregarded entity status for purposes of federal employment taxes. A disregarded entity would be regarded for employment tax purposes, and, accordingly, become liable for employment taxes on wages paid to employees of the disregarded entity, and be responsible for satisfying other employment tax obligations (*e.g.*, backup withholding under section 3406, making timely deposits of employment taxes, filing returns, and providing wage statements to employees on Forms W–2). The owner of the disregarded entity would no longer be liable for employment taxes or satisfying other employment tax obligations with respect to the employees of the disregarded entity. The disregarded entity would continue to be disregarded for other Federal tax purposes. The proposed regulations contain an example illustrating the interaction of the income tax provisions and employment tax provisions. For example, the proposed regulations illustrate that an individual owner of a disregarded entity would continue to be treated as self-employed for purposes of Self Employment Contributions Act (SECA) taxes (section 1401 et sequitur), and not as an employee of the disregarded entity for employment tax purposes.

The employment tax provisions of these regulations are proposed to apply to wages paid on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**. QSubs, single-owner eligible entities disregarded under §§ 301.7701–1 through 301.7701–3, and the owners of such entities may continue to use the procedures permitted by Notice 99–6 to satisfy the owners' employment tax liabilities and other employment tax obligations for periods before the effective date of these regulations. As required by Notice 99–6, if the owner currently satisfies the employment tax liabilities and other employment tax obligations with respect to wages paid to employees performing services for the disregarded entity, then the owner must continue to satisfy such liabilities and obligations until these regulations become final and effective, at which time Notice 99–6 will be obsoleted.

2. Excise Taxes

The proposed regulations would eliminate disregarded entity status for purposes of certain excise taxes. An entity that is disregarded for other federal tax purposes would be required to pay and report excise taxes, required and allowed to register, and allowed to claim any credits (other than income tax credits), refunds, and payments. The excise tax provisions that are excluded from the proposed regulations are specified. Because a disregarded entity does not file an income tax return, the credit on Form 4136 under section 34 is

claimed on the owner's income tax return and appropriate identification of the single-owner entity and its taxpayer identification number is required. The income tax credit under section 38 (including any credit under sections 40 and 40A) is not affected by these proposed regulations.

The excise tax provisions in these regulations are proposed to apply to liabilities imposed and actions first required or permitted in periods beginning on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**. For periods beginning before the effective date of these regulations, the IRS will treat payments made by a disregarded entity, or other actions taken by a disregarded entity, with respect to the excise taxes affected by these regulations as having been made or taken by the sole owner of that entity. Thus, for such periods, the owner of a disregarded entity will be treated as satisfying the owner's obligations with respect to the excise taxes affected by these regulations, provided that those obligations are satisfied either (i) by the owner itself or (ii) by the disregarded entity on behalf of the owner.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. In addition, comments are requested specifically on any transition issues that might arise with respect to employment taxes, and any transition relief that should be provided with respect to employment tax obligations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries), and John Richards, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.34–1 is revised to read as follows:

§ 1.34–1 Special rule for owners of certain business entities.

Amounts payable under sections 6420, 6421, and 6427 to a business entity that is treated as separate from its owner under § 1.1361–4(a)(8) (relating to certain qualified subchapter S subsidiaries) or § 301.7701–2(c)(2)(v) of this chapter (relating to certain wholly-owned entities) are, for purposes of section 34, treated as payable to the owner of that entity.

§§ 1.34–2 through 1.34–6 [Removed]

Par. 3. Sections 1.34–2 through 1.34–6 are removed.

Par. 4. Section 1.1361–4 is amended as follows:

1. In paragraph (a)(1), the language ''Except as otherwise provided in paragraphs (a)(3) and (a)(6)'' is removed, and ''Except as otherwise provided in paragraphs (a)(3), (a)(6), (a)(7), and (a)(8)'' is added in its place.

2. Paragraphs (a)(7) and (a)(8) are added.

The additions read as follows:

§ 1.1361–4 Effect of QSub election.

(a) * * *

(7) *Treatment of QSubs for purposes of employment taxes*—(i) *In general.* A QSub is treated as a separate corporation for purposes of Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(ii) *Effective date.* This paragraph (a)(7) applies with respect to wages paid on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**.

(8) *Treatment of QSubs for purposes of certain excise taxes*—(i) *In general.* A QSub is treated as a separate corporation for purposes of—

(A) Federal tax liabilities imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Internal Revenue Code, or any floor stocks tax imposed on articles subject to any of these taxes;

(B) Collection of tax imposed by Chapter 33 of the Internal Revenue Code;

(C) Registration under sections 4101, 4222, and 4412; and

(D) Claims of a credit (other than a credit under section 34), refund, or payment related to a tax described in paragraph (a)(8)(A) of this section.

(ii) *Effective date.* This paragraph (a)(8) applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**.

Par 5. Section 1.1361–6 is amended as follows:

The language ''Except as provided in §§ 1.1361–4(a)(3)(iii), 1.1361–4(a)(5)(i), and 1.1361–5(c)(2)'' is removed, and ''Except as otherwise provided in §§ 1.1361–4(a)(3)(iii), 1.1361–4(a)(5)(i), 1.1361–4(a)(6)(iii), 1.1361–4(a)(7)(ii), 1.1361–4(a)(8)(ii), and 1.1361–5(c)(2)'' is added in its place.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

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

Par. 7. Section 301.7701–2 is amended as follows:

1. In paragraph (a), a sentence is added at the end.

2. In paragraph (c)(2)(i), the language ''A business'' is removed, and ''Except as otherwise provided in this paragraph (c), a business'' is added in its place.

3. Paragraphs (c)(2)(iv), (c)(2)(v), (e)(3), and (e)(4) are added.

The additions read as follows:

§ 301.7701–2 Business entities; definitions.

(a) * * * But see paragraphs (c)(2)(iv) and (v) of this section for special employment and excise tax rules that apply to an eligible entity that is otherwise disregarded as an entity separate from its owner.

* * * * *

(c) * * *

(2) * * *

(iv) *Special rule for employment tax purposes*—(A) *In general.* Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(B) *Example.* The following example illustrates the application of paragraph (c)(2)(iv) of this section:

Example. (i) LLCA is an eligible entity owned by individual A and is generally disregarded as an entity separate from its owner for federal tax purposes. However, LLCA is treated as an entity separate from its owner for purposes of subtitle C of the Internal Revenue Code. LLCA has employees and pays wages as defined in sections 3121(a), 3306(b), and 3401(a).

(ii) LLCA is subject to the provisions of subtitle C of the Internal Revenue Code and related provisions under 26 CFR subchapter C, Employment Taxes and Collection of Income Tax at Source, parts 31 through 39. Accordingly, LLCA is required to perform such acts as are required of an employer under those provisions of the Code and regulations thereunder that apply. All provisions of law (including penalties) and the regulations prescribed in pursuance of law applicable to employers in respect of such acts are applicable to LLCA. Thus, for example, LLCA is liable for income tax withholding, Federal Insurance Contributions Act (FICA) taxes, and Federal Unemployment Tax Act (FUTA) taxes. See sections 3402 and 3403 (relating to income tax withholding); 3102(b) and 3111 (relating to FICA taxes), and 3301 (relating to FUTA taxes). In addition, LLCA must file under its name and EIN the applicable Forms in the 94X series, for example, Form 941, ''Employer's Quarterly Employment Tax Return,'' Form 940, ''Employer's Annual Federal Unemployment Tax Return;'' file with the Social Security Administration and furnish to LLCA's employees statements on Forms W–2, ''Wage and Tax Statement;'' and make timely employment tax deposits. See §§ 31.6011(a)-1, 31.6011(a)-3, 31.6051–1, 31.6051–2, and 31.6302–1 of this chapter.

(iii) A is self-employed for purposes of subtitle A, chapter 2, Tax on Self-Employment Income, of the Internal Revenue Code. Thus, A is subject to tax under section 1401 on A's net earnings from self-employment with respect to LLCA's activities. A is not an employee of LLCA for purposes of subtitle C of the Code. Because LLCA is treated as a sole proprietorship of A for income tax purposes, A is entitled to deduct trade or business expenses paid or incurred with respect to activities carried on through LLCA, including the employer's share of employment taxes imposed under sections 3111 and 3301, on A's Form 1040, Schedule C, ''Profit or Loss for Business (Sole Proprietorship).''

(v) *Special rule for certain excise tax purposes*—(A) *In general.* Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply for purposes of—

(*1*) Federal tax liabilities imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Internal Revenue Code, or any floor stocks tax imposed on articles subject to any of these taxes;

(*2*) Collection of tax imposed by Chapter 33 of the Internal Revenue Code;

(*3*) Registration under sections 4101, 4222, and 4412; and

(*4*) Claims of a credit (other than a credit under section 34), refund, or payment related to a tax described in paragraph (c)(2)(v)(A)(1) of this section.

(B) *Example.* The following example illustrates the provisions of this paragraph (c)(2)(v).

Example. (i) LLCB is an eligible entity that has a single owner, B. LLCB is generally disregarded as an entity separate from its owner. However, under paragraph (c)(2)(v) of this section, LLCB is treated as an entity separate from its owner for certain purposes relating to excise taxes.

(ii) LLCB mines coal from a coal mine located in the United States. Section 4121 of chapter 32 of the Internal Revenue Code imposes a tax on the producer's sale of such coal. Section 48.4121–1(a) of this chapter defines a ''producer'' generally as the person in whom is vested ownership of the coal under state law immediately after the coal is severed from the ground. LLCB is the person that owns the coal under state law immediately after it is severed from the ground. Under paragraph (c)(2)(v)(A)(*1*) of this section, LLCB is the producer of the coal and is liable for tax on its sale of such coal under chapter 32 of the Internal Revenue Code. LLCB must report and pay tax on Form 720, ''Quarterly Federal Excise Tax Return,'' under its own name and taxpayer identification number.

(iii) LLCB uses undyed diesel fuel in an earthmover that is not registered or required to be registered for highway use. Such use is an off-highway business use of the fuel. Under section 6427(l), the ultimate purchaser is allowed to claim an income tax credit or payment related to the tax imposed on diesel fuel used in an off-highway business use. Under paragraph (c)(2)(v) of this section, for purposes of the credit or payment allowed under section 6427(l), LLCB is the person that could claim the amount on its Form 720 or on a Form 8849, ''Claim for Refund of Excise Taxes.'' Alternatively, if LLCB did not claim a payment during the time prescribed in section 6427(i)(2) for making a claim under section 6427, § 1.34–1 of this chapter provides that B, the owner of LLCB, could claim the income tax credit allowed under section 34 for the nontaxable use of diesel fuel by LLCB.

* * * * *

(e) * * *

(3) Paragraph (c)(2)(iv) of this section applies with respect to wages paid on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**.

(4) Paragraph (c)(2)(v) of this section applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–20765 Filed 10–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[Docket No. IA–015–FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposes to amend its rules regarding small operator assistance. Iowa intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

This document gives the times and locations that the Iowa program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the

amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on the amendment until 4 p.m., c.t., November 17, 2005. If requested, we will hold a public hearing on the amendment on November 14, 2005. We will accept requests to speak at a hearing until 4 p.m., c.t. on November 2, 2005.

ADDRESSES: You may submit comments, identified by Docket No. IA–015–FOR, by any of the following methods:

- E-mail: *IFOMAIL@osmre.gov.* Include Docket No. IA–015–FOR in the subject line of the message.
- Mail/Hand Delivery: Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002.
- Fax: (618) 463–6470.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Iowa program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Alton Field Division. Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, E-mail: *IFOMAIL@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Description of the Proposed Amendment

By letter dated August 19, 2005 (Administrative Record No. IA–450), the Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (IDSC) sent us a copy of the coal mine rules it had adopted on March 30, 2005. Included in the adopted rules were changes to Iowa's rule at 27—40.41(207) regarding small operator assistance that we had not previously approved. Iowa proposed the changes in response to a required program amendment at 30 CFR 915.16(b).

27—40.41(207) Permanent Regulatory Program—Small Operator Assistance Program

Iowa proposes to add the following new subrules at rule 27—40.41(207):

Subrule 40.41(3)

Eligibility thresholds for annual production in tons at 30 CFR 795.6(a)(2) shall not apply until the same threshold at Iowa Code section 207.4(1)(d) has been amended from 100,000 tons to 300,000 tons.

Subrule 40.41(4)

Program services at 30 CFR 795.9(b)(3) through 795.9(b)(6) shall not apply until Iowa Code section 207.4(1)(d) has been amended to authorize these services.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the changes to 27—40.41(207) satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve the changes, they will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Alton Field Division may not be logged in.

Electronic Comments

Please submit e-mail comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. IA–015–FOR'' and your name and return address in your e-mail message. If you do not receive a confirmation that we have received your Internet message, contact the Alton Field Division at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on November 2, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We

will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Iowa program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Iowa program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Region.

[FR Doc. 05–20787 Filed 10–17–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[Docket No. OK–030–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposes revisions to rules concerning cross sections, maps, and plans; subsidence control; impoundments; revegetation success standards; roads; and review of decision not to inspect or enforce. Oklahoma intends to revise its program to provide additional safeguards, clarify ambiguities, and improve operational efficiency. This document gives the times and locations that the Oklahoma program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t. November 17, 2005. If requested, we will hold a public hearing on the amendment on November 14, 2005. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on November 2, 2005.

ADDRESSES: You may submit comments, identified by Docket No. OK–030–FOR, by any of the following methods:

- E-mail: *mwolfrom@osmre.gov.* Include ''Docket No. OK–030–FOR'' in the subject line of the message.
- Mail/Hand Delivery: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547.
- Fax: (918) 581–6419.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Oklahoma program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, E-mail: *mwolfrom@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 427–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning the Oklahoma program and program amendments at 30 CFR 936.10, 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated July 15, 2005 (Administrative Record No. OK–946.02), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment to include the changes made at its own initiative. Below is a summary of the changes proposed by Oklahoma. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes or corrections of cross-references. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. 460:20–25–11, and 460:20–29–11. Cross Sections, Maps, and Plans

Oklahoma proposed to delete subsections (a)(11) that require permit applicants to include on cross sections, maps, and plans, sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.

B. 460:20–31–13. Subsidence Control Plan

Oklahoma proposed to revise subsection (a)(3) so that, for areas where unplanned subsidence is projected to be used, an underground mining permit application does not have to include a pre-subsidence survey of: (1) the condition of all non-commercial buildings or occupied residential dwellings and related structures thereto, or (2) the quantity and quality of all drinking, domestic, and residential water supplies within the permit and adjacent areas.

C. 460:20–43–14. Impoundments

Oklahoma proposed to add new subsection (a)(14) to read as follows:

(14) The embankment slopes of each impoundment shall not be closer than 100 feet to any public road right-of-way unless otherwise approved under procedures established in 460:20–7–4(4) and 460:20–7–5(d). The area between the road right-of-way and the impoundment slopes, clear zone slopes, shall not be steeper than a 1V:6H grade.

D. 460:20–43–46. and 460:20–45–46. Revegetation: Standards for Success

Oklahoma proposed to revise subsection (b)(3) pertaining to the minimum revegetation success standards for areas developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

1. Oklahoma proposed to revise paragraph (b)(3)(A), regarding fish and wildlife habitat, by requiring the Oklahoma Department of Mines to specify the minimum stocking and planting arrangements for fish and wildlife habitat after consulting with the State agencies responsible for the administration of forestry and wildlife programs.

2. Oklahoma proposed to add new sub-paragraphs (b)(3)(A)(i) and (ii), regarding fish and wildlife habitat plans, that set forth the minimum: (1) stocking rate and types of trees or shrubs if trees or shrubs are to be planted, and (2) seeding rate and types of grasses or forbs if grasses or forbs are to be planted.

3. Oklahoma proposed to add new sub-paragraph (b)(3)(A)(iii) requiring the applicant to submit an alternative wildlife habitat plan to the Department for review if he or she chooses not to follow the requirements of proposed new sub-paragraphs (b)(3)(A)(i) and (ii) regarding fish and wildlife habitat plans. In addition, the applicant must submit, along with the alternative plan, written approval of the alternative planting rates and species from the State agency responsible for the management of fish and wildlife.

4. Oklahoma proposed to add new paragraph (b)(3)(D) that requires comments regarding minimum revegetation success standards for areas developed for fish and wildlife habitat, recreation, shelter belts, or forest products from State agencies responsible for the management of fish and wildlife.

E. 460:20–43–52. Roads: General

Oklahoma proposed to add new subsection (d)(3) that requires compliance with 460:20–43–14(a)(1) when a public road is relocated.

F. 460:20–45–47. Subsidence Control

Oklahoma proposed to delete, in its entirety, subsection (b)(4) pertaining to a rebuttable presumption of causation by subsidence.

G. 460:20–57–6. Review of Decision Not to Inspect or Enforce

1. Oklahoma proposed to revise subsection (a) to read as follows:

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may request the Department to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in request for a State inspection under Section 460:20–57–3. The request for review shall follow the procedures set forth in this Section.

2. Oklahoma proposed to revise subsection (b) by deleting the current language and replacing it with language that specifies the procedures for requesting and conducting an informal conference.

3. Oklahoma proposed to add new subsection (c) that specifies a reasonable time frame for holding the informal conference, where the conference is to be held, and notifications that must be made regarding the conference.

4. Oklahoma proposed to add new subsection (d) that specifies when an informal conference may be canceled.

5. Oklahoma proposed to redesignate existing subsections (c) and (d) as new subsections (e) and (f).

6. Oklahoma proposed to revise redesignated subsection (f) to read as follows:

(f) Any determination made under (b) of this Section shall constitute a decision of the Department within the meaning of the Department's Rules of Practice and Procedure and shall contain a right of an appeal to formal administrative review in accordance with the Rules of Practice and Procedure.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to us at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. OK–030–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on November 2, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others

present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 2, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Region.

[FR Doc. 05–20786 Filed 10–17–05; 8:45 am]

BILLING CODE 4310–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1835 and 1852

RIN 2700–AC64

NASA Federal Acquisition Regulation (FAR) Supplement—Research and Development Abstracts

AGENCY: National Aeronautics and Space Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws the proposed rule published Friday, October 31, 2003 (68 FR 62048—62049). NASA will issue internal guidance to automate the collection and transfer of Research and Development (R&D) abstracts to an appropriate central repository where they will be available for use by government agencies and other users.

DATES: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Monique Sullivan, NASA Headquarters, Contract Management Division, Washington, DC, (703) 553–2560, e-mail: *Monique.sullivan-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Background: In the proposed rule published Friday, October 31, 2003 (68 FR 62048—62049), NASA proposed to amend the NASA FAR Supplement (NFS) to include a requirement for the electronic submission of abstracts of the planned research to be conducted under contracts containing research and development (R&D) effort valued at over $25,000. The proposed rule added a new section 1835.003–70, NASA Research and Development (R&D) Abstracts, and a related clause, 1852.235–75, NASA Research and Development (R&D) Abstracts. The new clause provided for the collections of abstracts or summaries for NASA-funded-awards with R&D effort greater than $25,000. The requirements of section 207(g) of the E-Government Act of 2002 (Pub. L. 107–347) provide the basis for this change. Section 207(g) mandates the development and maintenance of a repository that integrates information on research and development funded by the Federal Government. In furtherance of this requirement, NASA had also established a Web-based database system to collect summaries or abstracts for all the Agency's procurements containing research and development effort valued over $25,000. A NASA Web site was further established for recipients of NASA R&D contracts to enter their abstract data. The proposed rule is withdrawn because the automation of the requirements of section 207(g) of the E-Government Act of 2002 (Pub. L. 107–347) voids the need for the proposed rule.

James A. Balinskas,

Acting Assistant Administrator for Procurement.

[FR Doc. 05–20846 Filed 10–17–05; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register

Vol. 70, No. 200

Tuesday, October 18, 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 13, 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, DC 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.

Animal and Plant Health Inspection Service

Title: User Fee Regulation, 7 CFR 354 and 9 CFR 130.

OMB Control Number: 0579–0094.

Summary of Collection: The Food, Agriculture, Conservation and Trade Act of 1990, authorizes the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS) to prescribe and collect fees to cover the cost of providing certain Agricultural Quarantine and Inspection (AQI) services. The Act gives the Secretary the authority to charge for the inspection of international passengers, commercial vessels, trucks, aircraft, and railroad cars, and to recover the costs of providing the inspection of plants and plant products offered for export. The Secretary is authorized to use the revenue to provide reimbursements to any appropriation accounts that incur costs associated with the AQI services provided. APHIS will collect information using several APHIS forms.

Need and Use of the Information: APHIS collects information, which includes the taxpayer identification number, name, and address and telephone number to collect fees. The procedures and the information requested for the passengers and aircrafts are used to ensure that the correct users fees are collected and remitted in full in a timely manner. Without the information, APHIS would not be able to ensure substantial compliance with the statute. Noncompliance with the statute could result in misappropriation of public funds and lost revenue to the Federal Government.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Individuals or households; Federal Government; State, local or tribal government.

Number of Respondents: 184,277.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 9,873.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–20827 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV05–944–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for specified exempt import commodities.

DATES: Comments must be received by December 19, 2005.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.*

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:

Title: Specified Commodities Imported into the United States Exempt from Import Requirements.

OMB Number: 0581–0167.

Expiration Date of Approval: June 30, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. of 601–674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or

comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, the following commodities are subject to Section 8e import regulations: Avocados, dates (other than dates for processing), hazelnuts, grapefruit, table grapes, kiwifruit, olives (other than Spanish-style olives), onions, oranges, Irish potatoes, dried prunes (suspended), fresh prunes, raisins, tomatoes, and walnuts. However, imports of these commodities are exempt from such requirements if they are imported for such outlets as processing, charity, animal feed, seed, and distribution to relief agencies, when those outlets are exempt under the applicable marketing order.

Safeguard procedures in the form of importer and receiver importer requirements are used to ensure that the imported commodity is provided to authorized exempt outlets. The safeguard procedures are similar to the reports currently required by most domestic marketing orders. The import regulations require importers and receivers of imported fruit, vegetable and specialty crops to submit a form as provided in the following regulations: (1) Fruits; import regulations (7 CFR part 944.350); (2) Vegetables; import regulations (7 CFR part 980.501); and (3) Specialty crops; import regulations (7 CFR part 999.500).

An importer wishing to import commodities for exempt purposes must complete, prior to importation, an ''Importer's Exempt Commodity Form'', FV–6, which is a four-part form. The first copy is presented to U.S. Customs and Border Protection, Department of Homeland Security. The importer files the second copy is filed with the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Programs, AMS, within two days after the commodity enters the United States. The third copy of the form accompanies the exempt shipment to its intended destination. The receiver certifies that the commodity has been received and that it will be utilized for authorized exempt purposes. The receiver then files the third copy with MOAB, within two days after receiving the commodity. The fourth copy is retained by the importer.

The Department of Agriculture (Department) utilizes this information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. These exemptions are consistent with Section 8e import regulations under the Act.

The form requires the minimum amount of information necessary to effectively carry out the requirements of the Act, and its use is necessary to fulfill the intent of the Act, and to administer Section 8e, compliance activities.

In addition, included in this extension and revision of a currently approved information collection is another form titled, ''Civil Penalty Stipulation Agreement'', (FV–7) (Agreement). The requirement for this form is a signature and, therefore, there is no burden on the respondent.

The information collected is used primarily by authorized representatives of the Department, including AMS, Fruit and Vegetable Programs' regional and headquarters staff. AMS is the primary user of the information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: Importers and receivers of exempt commodities.

Estimated Number of Respondents: 491.

Estimated Number of Responses per Respondent: 10.91.

Estimated Total Annual Burden on Respondents: 907.42 hours.

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.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0167 and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–2829, or e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular Department business hours at 1400 Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a mater of public record.

Dated: October 13, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20861 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–308]

United States Standards for Grades of Sweet Peppers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Sweet Peppers. The revision will allow sweet peppers to be marketed as mixed varieties and/or colors when marked with more than one variety or color on the container. The decay tolerance will be revised to include only those sweet peppers which are affected by decay on the wall and/or calyx. Decay affecting only stems will no longer fall under the restricted decay tolerance. It will be scored against the five percent serious damage tolerance for U.S. Fancy and U.S. No 1 grades and against the five percent restrictive tolerance for the U.S. No. 2 grade. The requirement to designate peppers which fail to meet the color requirements of their respective grades or respective (color specified) grade will be made optional. The ''Unclassified'' section will be deleted. The purpose for this revision is to update and revise the standards to accurately represent today's marketing practices.

DATES: *Effective Date:* November 17, 2005.

FOR FURTHER INFORMATION CONTACT: Cheri Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence

Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; E-mail *Cheri.Emery@usda.gov.* The revised United States Standards for Grades of Sweet Peppers will be available either through the address cited above or by accessing the Fresh Products Branch website at *http://www.ams.usda.gov/standards/stanfrfv.htm.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the voluntary U.S. Standards for Grades of Sweet Peppers using procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1989.

Background

On June 15, 2004, AMS published a notice in the **Federal Register** (69 FR 33345) soliciting comments on the possible revision to the United States Standards for Grades of Sweet Peppers. AMS received three comments in response to the notice. Two comments were in favor of revising the decay tolerance. The decay tolerance will be revised to include only those sweet peppers which are affected by decay on the wall and/or calyx. Decay affecting only stems will no longer fall under the restricted two percent decay tolerance, it will be scored against the five percent serious damage tolerance for U.S. Fancy and U.S. No 1 grades and against the five percent restrictive tolerance for the U.S. No. 2 grade. The third comment was not in favor of changing the decay tolerance. In addition, this commenter requested changes for sizing and color issues within the standard.

A second notice was published in the March 11, 2005, **Federal Register** (70 FR 12176–7) based on three comments received from the first notice. AMS received two comments in response to the second notice. One comment was in favor of the proposed revision to the standards changing the scoring of decay by separating stem decay from decay affecting the walls and/or calyxes. The other comment was opposed to those changes. The comments are available by accessing AMS's Home Page on the Internet at *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

One comment from an industry association which represents growers, packers and shippers, is in favor of the revision to the decay tolerance. The commenter stated the change will have a positive impact on the marketing of sweet peppers.

One comment opposing the revision to the decay tolerance stated that all decay has a serious negative impact on the appearance and marketability of the product and requested not to change the decay scoring and reporting. The commenter also stated that decay affecting the stems, walls, and calyxes should be scored against any grade (requirements and tolerances). AMS has reviewed stem decay affecting various commodities and believes the proposed changes would bring sweet peppers in line with other grade standards with respect to stem decay. Decay affecting the stem only does not affect the edible portion of the sweet pepper, and does not affect the marketability to the same degree as decay affecting the wall and/or calyx. AMS believes a revision to the decay tolerance is warranted to best serve the industry.

Current marketing practices for specialty packs which include mixed varieties and/or colors of sweet peppers would not meet the similar varietal characteristic requirements for all grades in the standards. Accordingly, AMS is revising the similar varietal requirement to allow mixed varieties and/or colors of sweet peppers when containers are marked with more than one variety and/or color.

AMS will also eliminate the unclassified category. This section is not a grade and only serves to show that no grade has been applied to the lot. This section will be removed from all fresh fruit and vegetable standards. It is no longer considered necessary.

AMS requested comments on industry terms for size based on 1⅑ bushel containers. AMS received a comment in favor of developing size requirements. The commenter also requested size definitions (small, medium, large, extra large and jumbo) for peppers packed in 1⅑ bushel containers which are based on a count per container, as well as minimum diameters and lengths for each category. Further, the commenter requested marking requirements which would require cartons to be marked by count and/or size. AMS is not changing the current size requirements. The commenter's study submitted was based on only twenty-two cartons that contained five size categories. A greater number of statistical samples of each size would need to be submitted for consideration. Further, AMS believes it would be impractical to apply such requirements due to the various varietal characteristics of sweet peppers regarding shape and size, and the lack of a standardized container within the industry.

The official grade of a lot of sweet peppers covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The U.S. Standards for Grades of Sweet Peppers will become effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: October 13, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20860 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of petitions for trade adjustment assistance (TAA) that was filed by salmon producers in Alaska and Washington. Salmon producers in these states are no longer eligible for TAA benefits in fiscal year 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that the average salmon prices during the 2004 marketing year was $0.343/pound, which is 85 percent of the base 5-year average price. During that same marketing year, imports declined by 1.4 percent. Therefore, the average price for the most recent marketing year was not less than 80 percent of the average price for the base period and imports were no longer

contributing factors for program eligibility.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 6, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–20836 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fuel Reduction Activities Within the City of Bozeman's Municipal Watershed on the Gallatin National Forest and City of Bozeman Lands, Montana; Gallatin National Forest; Gallatin County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of a proposed fuels reduction project that will help maintain the water supply to the City of Bozeman. The project's purpose and need is to begin reducing the potential severity and extent and future wildland fires in the Bozeman and Hyalite Municipal Watersheds, begin creating vegetation and fuel conditions that will reduce the risk of excess sediment and ash reaching the municipal water treatment plant in the event of a sever wildland fire, begin creating vegetation and fuel conditions that will provide for firefighter and public safety by modifying potential fire behavior, and reduce fuel conditions in the wildland/urban interface (WUI). A range of 3 to 5 alternatives are targeted for consideration in this planning process.

DATES: Initial comments on this proposal should be received by November 11, 2005.

ADDRESSES: Written comments should be sent to Jim Devitt, Gallatin National Forest Supervisors Office, P.O. Box 130, Bozeman, Montana 59771–0130.

FOR FURTHER INFORMATION CONTACT: Jim Devitt, Bozeman Municipal Watershed Project Interdisciplinary Team Leader, Gallatin National Forest Supervisors Office, (406) 587–6749.

SUPPLEMENTARY INFORMATION: The purpose of this project, as identified by the Gallatin National Forest and the City of Bozeman, is to maintain a high-quality, long term, and predictable water supply for Bozeman area residents. The Bozeman Municipal Watershed analysis area is a landscape dominated by steep canyons and timbered slopes. The two drainages are very popular and receive heavy use for outdoor recreation activities such as pleasure driving, hiking, biking, camping, picnicking, fishing, and hunting, to name a few. The Bozeman Municipal Water project will apply to portions of National Forest System Lands and City of Bozeman land within the Bozeman and Hyalite Watersheds. There are several homes and sub-divisions within one half mile of the forest boundary or within the WUI. Fire simulation models showed that a large fire started in either Bozeman Creek or Hyalite Creek could easily burn into the adjacent drainage, resulting in a situation where both major sources of city water supply are simultaneously impacted. The Forest Service and City of Bozeman believe it is timely to begin addressing this project's purpose. The purpose and need for this project would be achieved by (1) Maintaining low fire severity conditions through prescribed burning. (2) Maintaining the effectiveness of the riparian filtration zone by removing or cutting conifers to invigorate shrub communities. (3) Treating invasive weed species to maintain native communities and allow the riparian area to function as efficiently as possible.

The Forest Service is looking for ways to do innovative treatments to address this project's purpose and need. Potential fuel activities being considered include treating up to 6,000 total acres, including a small portion of the Gallatin Divide Inventoried Roadless Area in the Bozeman Creek watershed, and treating up to 3,000 acres in the Hyalite Creek watershed with a combination of prescribed burning, thinning, brush cutting, and commercial tree harvest.

To facilitate public comment, the Forest Service has prepared a scoping document. This document identifies a one possible set of treatment options and can be viewed on the Gallatin National Forest Web site at *http://www.fs.fed.us/r1/gallatin*. A copy can be also be obtained by calling or writing the contact person identified above. The scooping comment period will end November 11, 2005.

Comments on the scoping document from the public and other agencies will be used in preparation of a Draft Environmental Impact Statement (DEIS). More specifically, comments will be used to modify and refine the alternatives and identify potential resources issues (environmental effects) that should be considered in analysis.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June of 2006. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS is estimated to be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. The Final EIS is scheduled for completion in the spring of 2007.

To assist the Forest Service in identifying and considering issues, comments should be specific to concerns associated with the fuel reduction activities within a municipal watershed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in structuring comments.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate during comment periods provided so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them. To assist the Forest Service in identifying and considering issues, comments should be specific to concerns associated with the management of roads and trails on the Gallatin National Forest. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in structuring comments.

I am the responsible official for this Environmental Impact Statement and

the ultimate decision for a Bozeman Watershed Project. My address is Forest Supervisor, Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: October 7, 2005.

Rebecca Heath,

Forest Supervisor.

[FR Doc. 05–20788 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forest, Mountain City Ranger District, Mountain City Ranger District Rangeland Management Project; Environmental Statements; Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Mountain City Ranger District of the Humboldt-Toiyabe National Forest will prepare an Environmental Impact Statement (EIS) on a proposal to authorize continued livestock grazing on National Forest System (NFS) lands within the boundaries administered by the Ranger District. The Project Area is located in Elko County, Nevada.

DATES: In order to be most effective, comments concerning the scope of the proposed analysis should be received within 30 days from the date that this Notice of Intent (NOI) is published in the **Federal Register**. The draft EIS is expected to be completed in March 2006, and the final EIS is expected to be completed in September 2006.

ADDRESSES: Send written comments to: District Ranger, Mountain City Ranger District, 2035 Last Chance Road, Elko, NV 89801.

Electronic comments may be sent via e-mail to: *comments-intermtn-humboldt-toiyabe-mtncity@fs.fed.us.*

Please put ''Grazing EIS'' in the subject line of e-mail transmissions.

FOR FURTHER INFORMATION, CONTACT: Douglas Clarke, Project Coordinator, Humboldt-Toiyabe National Forest, 2035 Last Chance Road, Elko, NV 89801, Telephone: 775–778–6127.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The Mountain City Ranger District Rangeland Management Project is an opportunity to provide for livestock grazing that is managed in a manner that will maintain areas that are currently ecologically satisfactory, according to Forest Plan direction (desired functioning conditions), or that will improve specific areas identified through this analysis or in the future as ecologically unsatisfactory (less than functioning condition).

Given the focus on this need, the purpose of the project is to bring current improper livestock grazing practices into alignment with the requirements of wildlife and other natural resources where needed in the Project Area. Also included in this project is the need to be able to apply the use of adaptive management when managing livestock and the affected natural resources. Currently, term grazing permits provide for little flexibility or ability to change management when monitoring shows a need or opportunity for change.

In the time since the Forest Plan goals were identified in 1986, wildlife science, range science, and natural resource management science have continued to evolve. More is known now about the relationship between species and the environments in which they live, resulting in changes in management direction for specific species over the last decade. Range scientists within both the Forest Service and the academic community have also conducted research and published scientific papers regarding the influences that livestock grazing has on the environment. In many areas across the American West, the results of this research have been applied in the design and implementation of effective adaptive management strategies. Much of this current science and knowledge should now be incorporated into grazing management within the Project Area.

The primary emphasis will be an ecological based approach rather than livestock administration. However, the emphasis will also include reponding to improper livestock management.

In addition to the need to incorporate new or updated research into existing grazing management strategies, the Mountain City Ranger District has gathered an extensive collection of historic and current photographs taken from the same places in different decades throughout the District. These photographs, known as ''repeat photo sets'' show that, in general, rangeland ecological conditions throughout the District have improved from the early 1900's to now, or maintained themselves at an acceptable level for the most part. In many instances there is a pronounced improvement from the 1960's and 1970's until now, which is a timeframe when many of the grazing management improvements in place today (rotational or improved grazing systems, infrastructure improvements such as division fences and water developments, and improved herding or animal husbandry practices) were originally implemented. The information gleaned from advances in science since the original Forest Plan was implemented, the inferences to ecological condition available from the repeat photo sets, and existing site-specific information were used to develop the proposed action for this analysis. The proposed action is designed to be able to specifically address, either currently if known during the course of this analysis, or identified through future monitoring or subsequent advances in knowledge about ecological relationships, the impacts from improper grazing practices.

Proposed Action

The Mountain City Ranger District of the Humboldt-Toiyabe National Forest is proposing to authorize continued livestock grazing on grazing allotments within the District under updated grazing management direction. The proposal encompasses approximately 490,500 acres of NFS lands in Elko County, Nevada. This updated management direction would be incorporated into all livestock grazing permits and associated allotment management plans as needed. This direction would guide livestock grazing management within the Project Area during the coming decade, or until amendments are warranted based on changed condition or monitoring results.

Other Possible Alternatives

In addition to the Proposed Action detailed above, we have tentatively identified two (2) additional alternatives that will be analyzed in the EIS:

(1) No Action Alternative: A continuation of the current grazing management without updated direction.

(2) No Grazing Alternative: New grazing permits would not be issued when existing permits expired.

Responsible Official

The responsible official is: Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

Nature of Decision To Be Made

Based on the environmental analysis presented in the EIS, the Forest Supervisor will decide whether or not to continue grazing on the allotments within the Project Area in accordance with the standards in the Proposed Action or as modified by mitigation

measures and monitoring requirements identified during the course of the analysis.

Scoping Process

The Forest Service will mail information to interested and/or affected parties. Public involvement will be ongoing throughout the analysis process, and public input will be specifically requested at certain times. There are currently no scoping meetings planned.

Preliminary Issues

The following are some potential issues identified through internal Forest Service scoping based on experience with similar projects. We are asking you to help us further refine the existing issues as wells as identify other issues or concerns relevant to the Proposed Action. This list is not considered all-inclusive; rather, it should be viewed as a starting point:

- Improper livestock grazing has the potential to affect the following resources as identified by internal scoping:
- Water quality in streams throughout the District;
- Habitat for Lahontan Cutthroat trout, a federally-listed species found in the Humboldt River Basin;
- Heritage resources within the Project Area;
- Vegetation, including riparian plant communities and aspen stands, which may result in a decline in the long-term productivity of the land base;
- Wildlife habitat for several species, including mule deer, pygmy rabbits, spotted frogs, northern goshawk, and sage grouse.

Comment Requested

This NOI initiates the scoping process which will guide the development of the EIS. The public is invited to submit comments stating your concerns and issues that are relevant to the proposed project. These comments will be used to help establish the scope of study and analysis for the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability (NOA) in the **Federal Register**.

The Forest Service believes that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could have been raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in a meaningful manner within the final EIS.

To assist the Forest Service in identifying and considering issues and concerns regarding the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if the comments refer to specific pages, sections, or chapters of the draft document. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record of this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 12, 2005.

Edward C. Monnig,

Acting Forest Supervisor.

[FR Doc. 05–20781 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Thursday, November 3, 2005, from 4 p.m. to 8 p.m. in Philipsburg, Montana, for a business meeting. The meeting is open to the public.

DATES: Thursday, November 3, 2005.

ADDRESSES: The meeting will be held at the USDA Forest Service office, 88 10–A Business Loop, Philipsburg, Montana.

FOR FURTHER INFORMATION CONTACT: Bruce Ramsey, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting includes a review of projects proposed for funding as authorized under Title II of Pub. L. 106–393 and public comment. If the meeting location is changed, notice will be posted in local newspapers, including The Montana Standard.

Dated: October 11, 2005.

Bruce Ramsey,

Forest Supervisor.

[FR Doc. 05–20782 Filed 10–17–05; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Courthouse Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Courthouse Access Advisory Committee (Committee) includes organizations with an interest in courthouse accessibility. This notice announces the date, times and location of the next Committee meeting, which will be open to the public.

DATES: The meeting of the Committee is scheduled for November 17, 2005 (beginning at 9 a.m. and ending at 5 p.m.) and November 18, 2005

(beginning at 9 a.m. and ending at 3 p.m.).

ADDRESSES: The meeting will be held at the California Judicial Council conference center (third floor), Hiram Johnson State building, 455 Golden Gate Avenue, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: David Yanchulis, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–0026 (Voice); (202) 272–0082 (TTY). e-mail *yanchulis@access-board.gov*. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/caac/meeting.htm*).

SUPPLEMENTARY INFORMATION: In 2004, as part of the outreach efforts on courthouse accessibility, the Access Board established a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. On October 12, 2004, the Access Board published a notice appointing 31 members to the Courthouse Access Advisory Committee. 69 FR 60608 (October 12, 2004). Members of the Committee include designers and architects, disability groups, members of the judiciary, court administrators, representatives of the codes community and standard-setting entities, government agencies, and others with an interest in the issues to be explored. The Committee held its initial meeting on November 4 and 5, 2004. Members discussed the current requirements for accessibility, committee goals and objectives and the establishment of subcommittees. The second meeting of the Committee was held in February, 2005. The Committee toured two courthouses and established three subcommittees: Education, Courtrooms and Courthouses (areas unique to courthouses other than courtrooms). The third and fourth meetings of the Committee were held in May, 2005 and August, 2005. Members of the Committee toured several courthouses and continued work in the three subcommittees. Minutes of the meetings may be found on the Access Board's Web site at *http://www.access-board.gov/caac/index.htm*. At the November meeting of the Committee, members will continue to address issues both as a full Committee and in subcommittees.

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on the subcommittees. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting will be held at a site accessible to individuals with disabilities. Real-time captioning will be provided. Individuals who require sign language interpreters should contact David Yanchulis by October 31, 2005. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 05–20725 Filed 10–17–05; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 051004256–5256–01]

2005 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2005 Company Organization Survey. The survey's data are needed, in part, to update the multilocation companies in the Business Register. The survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for the establishments of multilocation companies. We have determined that annual data collected from this survey are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from this survey are not available from any other source.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey, and additional copies are available upon written request to the Director, Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Paul Hanczaryk, Economic Planning and Coordination Division, U.S. Census Bureau, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 763–4058.

SUPPLEMENTARY INFORMATION: Title 13, United States Code (U.S.C.), Sections 182, 195, 224, and 225 authorize the Census Bureau to undertake surveys necessary to furnish current data on the subjects covered by the censuses. This survey will provide continuing and timely national statistical data for the period between economic censuses. The next economic censuses will be conducted for the year 2007. The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses. Forms NC–99001 and NC–99007 (for single-location companies) will be used to collect the desired data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act, 44 U.S.C., Chapter 35, the OMB approved Forms NC–99001 and NC–99007 on December 21, 2004, under OMB Control Number 0607–0444. We will furnish report forms to organizations included in this survey, and additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

I have, therefore, directed that the 2005 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: October 12, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05–20757 Filed 10–17–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico

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

SUMMARY: On May 10, 2005, the U.S. Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping order covering certain oil country tubular goods from Mexico. *See Certain Oil Country Tubular Goods from Mexico; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission*, 70 FR 24517 (May 10, 2005) (*Preliminary Results*). The review covers producers Hylsa, S.A. de C.V. (Hylsa) and Tubos de Acero de Mexico, S.A. (Tamsa). The period of review (POR) is August 1, 2003, through July 31, 2004. We invited parties to comment on our *Preliminary Results*. Based on our analysis of comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey and Abdelali Elouaradia at (202) 482–0193 and (202) 482–1374, respectively, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2005, we published in the **Federal Register** the preliminary results of this antidumping review. *See Preliminary Results*.

In response to our *Preliminary Results*, on June 9, 2005, we received case briefs from Hylsa and United States Steel Corporation (petitioner). Both parties submitted rebuttal briefs on June 17, 2005. IPSCO Tubulars, Inc., Lone Star Steel Company and Maverick Tube Corporation (domestic interested parties) also issued rebuttal briefs on June 14, 2005. Both Hylsa and petitioner requested a public hearing, which took place on July 12, 2005.

Because it was not practicable to complete the final results of this review within the original time period, the Department extended of the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Oil Country Tubular Goods from Mexico: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 48102 (August 16, 2005).

Partial Rescission

In our preliminary results, we announced our preliminary decision to rescind the review with respect to Tamsa because Tamsa had no entries of oil country tubular goods from Mexico during the POR. *See Preliminary Results*. We have received no new information contradicting the decision. Therefore, we are rescinding the administrative review with respect to Tamsa.

Scope of the Order

The merchandise covered by this order are oil country tubular goods (OCTG), hollow steel products of circular cross-section, including oil well casing and tubing of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes and limited–service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The OCTG subject to this order are currently classified in the HTSUS under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The Department has determined that couplings, and coupling stock, are not within the scope of the antidumping order on OCTG from Mexico. *See* Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in case and rebuttal briefs submitted by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 7, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Change Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes for the final results:

1. For the final results, we used entry date to define those sales used in our analysis.

2. For the calculation of constructed value profit, we have taken into account amounts incurred for certain general and administrative and interest expenses.

3. For the calculation of constructed value profit, we have applied the profit ratio to the cost of manufacturing.

Final Results of Review

As a result of our review, we determine that the following weighted–average dumping margin exists for the POR:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Hylsa, S.A. de C.V.	1.48

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue assessment instructions directly to the U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. As the merchandise subject to this order is exported from Mexico, pursuant to 19 CFR 356.8, the Department will issue appropriate assessment instructions directly to CBP on or after the 41st day after publication of these final results of review. We will direct CBP to assess the appropriate assessment rate against the entered CBP values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of OCTG from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.79 percent. This rate is the ''All Others'' rate from the LTFV investigation. *See Antidumping Duty Order: Oil Country Tubular Goods From Mexico*, 60 FR 41056 (August 11, 1995). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

Appendix

List of Issues

1. Entry Date
2. Constructed Value Profit
3. Limited–Service and Regular–Grade OCTG

4. Offsetting for Export Sales that Exceed Normal Value

[FR Doc. E5–5737 Filed 10–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2004, through January 31, 2005. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2004, the Department of Commerce (''the Department'') published a notice of initiation of an administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2004, through January 31, 2005 (70 FR 14643). The preliminary results for this administrative review are currently due no later than October 31, 2005.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Due to the complexity of choosing the appropriate date of sale and the late initiation of a cost investigation, it is not practicable to complete the preliminary results of this review within the original time limit (*i.e.*, October 31, 2005). Therefore, the Department is extending the time limit for completion of the preliminary results to no later than February 28, 2006, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: October 12, 2005.

Gary Taverman,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–5738 Filed 10–17–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

The Exporters' Textile Advisory Committee (ETAC) will meet on November 30, 2005. The meeting will be held from 10 a.m. to 2 p.m. at TC2, 211 Gregson Drive, Cary, North Carolina.

The Committee advises Department officials on the identification of and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to increase their exports and to participate in export expansion activities.

Agenda: Conditions in the export market place, CAFTA-DR discussion, Office of Textiles and Apparel export expansion activities, and other business.

The meeting will be open to the public with a limited number of seats available. For further information call Rachel Anne Alarid at (202) 482-5154. October 13, 2005.

D. Michael Hutchinson,

Acting Chairman, Committee for Implementation of Textile Agreements.

[FR Doc. E5–5736 Filed 10–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Hearing on the Draft Programmatic Environmental Impact Statement and Draft Management Plan for the Proposed Mission-Aransas National Estuarine Research Reserve in Texas

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Public Hearing Notice.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold two public hearings for the purpose of receiving comments on the Draft Programmatic Environmental Impact Statement and Draft Management Plan (DPEIS/DMP) prepared on the proposed designation of the Mission-Aransas National Estuarine Research Reserve in Texas. The DPEIS/DMP addresses research, monitoring, education and resource protection needs for the proposed reserve.

The Estuarine Reserves Division will hold two public hearings, the first hearing at 10:30 a.m. on November 9th, Hearing Room E1.012 in the Capital Extension, Texas State Capital, 1400 Congress Ave., Austin, TX 78701. A second hearing will be held at 4 p.m. on November 10, Saltwater Pavilion, 810 Seabreeze Drive, Rockport Beach Park, Rockport, TX 78383.

The views of interested persons and organizations on the adequacy of the DPEIS/DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Final Management Plan.

The comment period for the DPEIS/DMP will end on November 23rd, 2005. All written comments received by this deadline will be considered in the preparation of the FEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray (301) 713–3155 extension 158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM2, Silver Spring, MD 20910. Copies of the Draft Environmental Impact Statement/Draft Management Plan are available upon request to the Estuarine Reserves Division.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: October 11, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–20848 Filed 10–17–05; 8:45 am]

BILLING CODE 3510–08–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Thursday, November 10, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–20877 Filed 10–14–05; 9:44 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 4, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–20878 Filed 10–14–05; 9:44 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 18, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–20879 Filed 10–14–05; 9:44 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 25, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–20880 Filed 10–14–05; 9:44 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL)

AGENCY: Department of Defense; Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy).

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

This amendment revises the Air Force Research Laboratory (AFRL) demonstration project plan by changing from 180 days to 90 calendar days the amount of time required to be assessed under the Contribution-based Compensation System (CCS).

DATES: This amendment to the demonstration project may be implemented beginning on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: AFRL: Ms. Michelle Williams, AFRL/DPL, 1981 Monahan Way, Wright-Patterson AFB, Ohio 45433–5209. DoD: Ms. Patricia M. Stewart, CPMS–AF, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

The final plan was published in the **Federal Register** for the S&T Reinvention Laboratory personnel Management Demonstration Project at AFRL (Wednesday, November 27, 1996, Volume 61, Number 230, Part V, page 60400). An amendment to the final plan was published in the **Federal Register** as follows: To clarify which employees are subject to the extended probationary period; provide the contribution-based compensation system (CCS) bonus to eligible employees subject to the GS–15, step 10 pay cap; and change the name of broadband level descriptor ''Cooperation and Supervision'' and CCS Factor 6 ''Cooperation and Supervision'' to ''Teamwork and Leadership'' (Friday, January 21, 2000, Volume 65, Number 14, Part I, page 3498).

This demonstration project involves simplified job classification, two types of appointment authorities, an extended probationary period, pay banding, and CCS.

2. Overview

This amendment changes from 180 to 90 calendar days the amount of time required to be assessed under CCS. Experience has revealed that 180 days is unduly long and unnecessary for effective employee assessments under CCS.

I. Executive Summary

The Department of the Air Force established the AFRL personnel demonstration project to be generally similar to the system in use at the Department of the Navy personnel demonstration project known as China Lake. The AFRL demonstration project was built upon the concepts of a contribution-based compensation system, two appointing authorities, extended probationary period, simplified classification procedures delegated to the AFRL Commander, and pay banding.

II. Introduction

A. Purpose

The AFRL demonstration project provides managers, at the lowest practical level, the authority and flexibility needed to achieve a quality laboratory and quality products. the purpose of this amendment is to change the time an employee must be covered under the demonstration project from 180 to 90 calendar days in order to be assessed under CCS. Other basic provisions of the approved AFRL project plan are unchanged.

B. Employee Notification and Collective Bargaining Requirements

Employees affected by this amendment will be provided a copy of this notice. Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

III. Personnel System Changes

The AFRL demonstration project plan is amended as follows: Change section III.D.3., The CCS Assessment Process, (61 FR 60414) paragraph 5, second sentence to read: ''If on October 1, the employee has served under CCS for less than 90 calendar days during the annual assessment cycle, the supervisor will wait for the subsequent annual cycle to assess the employee. Periods of approved, paid leave will be counted toward the 90-day time period.''

Dated: October 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20800 Filed 10–17–05; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On September 26, 2005, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as ''The U.S. and Foreign Civilian Employees of CAT, Inc., Who Were Flight Crew Personnel (U.S. Pilots, Co-Pilots, Navigators, Flight Mechanics, and Air Freight Specialists) and Aviation Ground Support Personnel (U.S. Maintenance Supervisors, Operations Managers, and Flight Information Center Personnel) and Conducted Paramilitary Operations in Korea, French Indochina, Tibet and Indonesia From 1950 Through 1959; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Laos from 1961 Through 1974, When the War in Laos Ended; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Vietnam From 1964 Through 1975, When Saigon Was Evacuated and Air America Flight Operations Ceased'' shall not be considered ''active duty'' for purposes of all laws administered by the Department of Veterans Affairs (VA).

FOR FURTHER INFORMATION CONTACT: Mr. James D. Johnston at the Secretary of the

Air Force Personnel Council (SAFPC); 1535 Command Drive, EE Wing, 3d Fl.; Andrews AFB, MD 20762–7002.

Bruno Leuyer,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–20778 Filed 10–17–05; 8:45 am]

BILLING CODE 5001–05–P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendment to the Basin Regulations—Water Supply Charges and Comprehensive Plan Relating to Certificates of Entitlement

AGENCY: Delaware River Basin Commission.

SUMMARY: The Delaware River Basin Commission (''Commission'' or ''DRBC'') will hold a public hearing to receive comments on proposed amendments to the Commission's Basin Regulations—Water Supply Charges and Comprehensive Plan concerning certificates of entitlement. No changes in the substance or administration of the rule are proposed. The purpose of the proposed amendments is to clarify the language of the rule to conform to the Commission's past decisions and current practices in order to provide better notice to users as to how the Commission is implementing its entitlements program and to avoid future controversy.

Background. The Delaware River Basin Compact (''Compact''), the 1961 statute that created the DRBC and defined its powers, authorizes the Commission to charge for the use of facilities that it may own or operate and for products and services rendered thereby. Compact, § 3.7. Congress limited this authority by providing that the Commission cannot charge for water withdrawals or diversions that could lawfully have been made without charge as of the effective date of the Compact. *Id.*, § 15.1(b).

By Resolution No. 64–16A in 1964 the Commission authorized a water charging program. It provided for the revenues generated by the program to be used for repayment of the nonfederal share of the investment cost of water supply storage facilities associated with federal projects within the Basin. In anticipation of Commission investment in storage at the Beltzville Lake and Blue Marsh Reservoir projects in Pennsylvania, the Commission by Resolution No. 1971–4 defined, among other things, the means by which it would establish water charging rates. Consistent with Section 15.1(b) of the Compact, Resolution No. 1971–4 provided that charges would be applicable only to the amount of water withdrawn in excess of the amount taken or legally entitled to be taken by an entity during the preceding year. By Resolution No. 74–6, the Commission instituted a system of water supply charges for surface water withdrawals within the Basin. That resolution provided for the issuance of certificates of entitlement to then-current water users, establishing the amount of water each could lawfully take from the surface waters of the Basin without charge, consistent with Section 15.1(b) of the Compact. The resolution provided that a certificate of entitlement was not transferable, except under limited circumstances set forth in enumerated exceptions.

Because entitlements treat users that commenced water withdrawals before the enactment of the Compact more favorably than users who commenced water withdrawals later, even though all users benefit equally from the facilities financed by water supply charges, courts and the Commission have emphasized the need to eliminate entitlements over time. Both the Commission and the courts have construed narrowly the exceptions to the rule that entitlements are not transferable, and the Commission has in its decisions consistently held that changes in ownership or control would extinguish a certificate. However, the language of the regulations has never explicitly defined ''changes in ownership or control.'' As a consequence, in the decisions that the Commission has been asked to make in its adjudicatory capacity and that the courts have subsequently been asked to decide, the matter of what constitutes a change of ownership or control has been controversial.

In 1994, in response to a ruling by the Third Circuit in *Texaco Refining and Marketing, Inc.* v. *DRBC*, 824 F. Supp. 500 (D.Del. 1993), aff'd., No. 93–7475 (3d Cir. June 24, 1994) (per curiam), the Commission adopted Resolution No. 94–20. That resolution incorporated an explicit ''ownership and/or control'' test and eliminated the merger exception included in the Commission's regulations at the time. In addition, the exception for corporate reorganizations embodied in Section 5.2.1.F.2 of the Water Charging Regulations was amended to apply only when the reorganization ''does not affect ownership and/or control.''

In spite of the 1994 amendment, some members of the Basin community have continued to interpret the language of the rule in a manner contrary to the Commission's consistent interpretation. To avoid further controversy, the Commission proposes a more thorough revision of the language, intended to remove any ambiguity.

Key Provisions. In addition to defining ''change in ownership and/or control'' with much greater specificity, the proposed revisions also make clear that a merger at any tier in a corporate organization will extinguish a certificate held by a subsidiary in the same way as if the merger had occurred at the subsidiary level. Although the Commission has interpreted its rule this way in the past, the rules have never been explicit on this point.

The proposed amendments preserve and clarify the corporate reorganization exception contained in the current regulation. The Commission traditionally has not extinguished an entitlement in the case of an internal reorganization, and it does not propose a change in this practice.

The proposed amendments also preserve the existing exception for agricultural uses. Historically, agriculture has been treated differently than other uses. For purposes other than agriculture, an entitlement is issued to a user and would not be transferable to a different user, even if the use remained the same. In the case of agriculture, however, an entitlement effectively runs with the land, as long as the land remains in agriculture. The proposed amendments provide that an entitlement can be reissued to the successor of a holder of a certificate issued for agricultural water use, provided that the successor demonstrates that the water will continue to be used for agricultural irrigation purposes.

DATES: The public hearing will be held on Wednesday, December 7, 2005 at approximately 2:30 p.m. as part of the Commission's regularly scheduled business meeting. The time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 p.m. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event that all those who wish to testify cannot be heard on December 7, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609–883–9500, extension 224. Written comments will be accepted through Tuesday, January 10, 2006.

ADDRESSES: The text of the proposed amendment and the text of the current regulation are posted on the Commission's Web site, *http://www.drbc.net.* The public hearing will be held in the Goddard Room at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey. Directions to the Commission's office building are also posted on the Commission's Web site. Written comments should be addressed to the Commission Secretary as follows: by e-mail to *paula.schmitt@drbc.state.nj.us;* by fax to the Commission Secretary—609–883–9522; by U.S. Mail to the Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or by overnight mail to the Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: Please contact Commission Secretary Pamela Bush, 609–883–9500 x203, with questions about the proposed rule or the rulemaking process.

Dated: October 12, 2005.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 05–20789 Filed 10–17–05; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 Director, 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.

Dated: October 12, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Application for Approval to Participate in Federal Student Financial Aid Programs.

Frequency: Prior to Expiration of Eligibility.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,970.

Burden Hours: 20,830.

Abstract: The Higher Education Act of 1965 (HEA), as amended requires postsecondary institutions to complete and submit this application as a condition of eligibility for any of the Title IV student financial assistance programs and for the other postsecondary programs authorize by the HEA. The institution must submit the form (1) Initially when it first seeks to become eligible for the Title IV programs; (2) when its program participation agreement expires (recertification); (3) when it changes ownership, merges, or changes from structure, (4) to be reinstated to participate in the Title IV programs, (5) to notify the Department when it makes certain changes, e.g. name or address; and (5) if it wishes to have a new program (outside its current scope) or new location approved for Title IV purposes.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2839. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. 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. 05–20808 Filed 10–17–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 Director 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.

Dated: October 12, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Application for Ability to Benefit Testing Approval.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 150,090.

Burden Hours: 77,040.

Abstract: The Secretary will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability to benefit for a student who does not have a high school diploma or its equivalent for Student Financial Assistance Programs. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2844. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Revision.

Title: Student Assistance General Provisions—Subpart I—Immigration Status Confirmation.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 6,160.

Burden Hours: 16,370.

Abstract: Collection of this information used for immigration status confirmation reduces the potential of fraud and abuse caused by ineligible aliens receiving Federally subsidized student financial assistance under Title IV of the Higher Education Act (HEA) of 1965, as amended. The respondent population is comprised of 6,160 postsecondary institutions who participate in administration of the Title IV, HEA programs. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2845. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Extension.

Title: Federal Perkins Loan Program Regulations and General Provision Regulations.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 95,262.

Burden Hours: 25,859.

Abstract: Institutions of higher education make Perkins loans. Information is necessary in order to monitor a school's reimbursement to its Perkins loan revolving fund, monitor how collection costs are charged to borrowers on rehabilitation loans and to monitor the assignment of defaulted Perkins loans to the Department. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2848. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Extension.

Title: Federal Family Education Loan Program Regulations.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 858,981.

Burden Hours: 10,128,562.

Abstract: The Federal Family Education Loan Program proposed regulations revise the current regulations in areas of program administration. The regulations assure the Secretary that the integrity of the program is protected from fraud and other misuse of program funds. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2849. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Extension.

Title: William D. Ford Federal Direct Loan Program.

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 846,034.

Burden Hours: 211,520.

Abstract: The proposed regulations change three sections of the regulations that are currently cleared under the Paperwork Reduction Act. The proposed regulations do not affect the current burden hour estimates for this information collection. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2850. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Extension.

Title: Federal Perkins Loan Program Regulations.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 2,800,642.

Burden Hours: 61,879.

Abstract: Institutions of higher education make Perkins loans. Information is necessary in order to monitor a school's reimbursement to its Perkins loan revolving fund, monitor how collection costs are charged to borrowers on rehabilitated loans and to monitor the assignment of defaulted Perkins loans to the Department. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2852. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart K—Cash Management.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 6,576.

Burden Hours: 1,218,718.

Abstract: These regulations comprise the existing provisions of the Student Assistance General Provisions guidance regarding cash management. Information collection under these regulations relates to cash management requirements and practices for institutions participating in the Title IV, Higher Education Act (HEA) programs. The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2853. 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 202–245–6623. 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.

Federal Student Aid

Type of Review: Extension.

Title: Cohort Default Rates for Institutions Participating in the FFEL or Direct Loan Programs.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 93,877.

Burden Hours: 1,209,890.

Abstract: The regulations establish the standards to participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 (Title IV, HEA programs). The public is alerted that this package is a request for an extension of a currently approved collection. Until the anticipated reauthorization of the Higher Education Act and any resulting regulations, the existing paperwork collection is simply extended, rather than revised.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2851. 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 202–245–6623. 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. 05–20809 Filed 10–17–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 Director, 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.

Dated: October 12, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: SEA Procedures for Adjusting ED-Determined Title I Allocations to Local Education Agencies (LEAs).

Frequency: As needed.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 2,080.

Abstract: Guidance for State educational agencies (SEAs) on procedures for adjusting ED-determined Title I Basic and Concentration Grants allocations to local educational agencies (LEAs) to account for newly created LEAs and LEA boundary changes.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2843. 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 202–245–6623. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–20810 Filed 10–17–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 Director, 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.

Dated: October 12, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: State Agency Use of Alternative Method to Distribute Title I Funds to LEAs with Fewer Than 20,000 Total Residents.

Frequency: As needed.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 200.

Abstract: Guidance for State educational agencies seeking to use an alternative method to distribute Title I Basic and Concentration Grants to local educational agencies.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2842. 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 202–245–6623. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–20811 Filed 10–17–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.017A.

Dates: Applications Available: October 17, 2005. Deadline for Transmittal of Applications: See the chart listed under section IV. Application and Submission Information, 3. *Submission Dates and Times* (chart).

Eligible Applicants: Public and private agencies, organizations, institutions, and individuals.

Estimated Available Funds: The Administration has requested $5,925,000 for the International Research and Studies Program for FY 2006, of which we intend to use an estimated $2,704,173 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$200,000 per year.

Estimated Average Size of Awards: $122,917.

Estimated Number of Awards: 22.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 660.10, 660.34).

Invitational Priority: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1

The development of instructional materials for use by students, teachers, and college faculty that focus on Islamic societies and the languages of those societies; and

Invitational Priority 2

Research, surveys, studies or the development of instructional materials that serve to enhance international understanding for use at the elementary and secondary education levels, or for use in teacher education programs

Program Authority: 20 U.S.C. 1125.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR parts 655 and 660.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $5,925,000 for the International Research and Studies Program for FY 2006 of which we intend to use an estimated $2,704,173 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$200,000 per year.

Estimated Average Size of Awards: $122,917.

Estimated Number of Awards: 22.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Public and private agencies, organizations, institutions, and individuals.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Mr. Ed McDermott, U.S. Department of Education, 1990 K Street, NW., suite 600, Washington, DC 20006–8521. Telephone: (202) 502–7636 or by e-mail: *ed.mcdermott@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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.
- The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. Submission Dates and Times

Applications Available: October 17, 2005.

Deadline for Transmittal of Applications: In light of the damage caused by Hurricanes Katrina and Rita we are establishing two separate deadlines for the submission of applications for grants under this competition to permit potential applicants affected by Hurricanes Katrina and/or Rita additional time to submit their applications. We are establishing a *General Deadline* for all applicants, and an *Extended Deadline* for potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. Specifically, the *Extended Deadline* applies only to: (1) institutions of higher education, SEAs, LEAs, non-profit organizations and other public or private organization applicants that are located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (see *http://www.fema.gov/news/disasters.fema*) and that were adversely affected by Hurricanes Katrina and/or Rita, and (2) individual applicants who reside or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (see *http://www.fema.gov/news/disasters.fema*) and were adversely affected by Hurricanes Katrina and/or Rita. These applicants must provide a certification in their application that they meet the criteria for submitting an application on the *Extended Deadline,* and be prepared to provide appropriate supporting documentation, if requested. If the applicant is submitting the application electronically, submission of the application serves as the applicant's attestation that they meet the criteria for submitting an application on the *Extended Deadline*.

The following chart provides the applicable deadlines for the submission of applications. If this program is subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

	Transmittal of applications	Intergovernmental review
General Deadline	11/16/05	N/A
Extended Deadline	12/1/05	N/A

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

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 program 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 International Research and Studies program—CFDA Number 84.017A must be submitted electronically using the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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.*

You may access the electronic grant application for International Research and Studies at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at: *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*) and provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete.

For individuals who plan to submit a grant application, you must follow the registration steps for individuals (see *http://www.Grants.gov/GetStarted*).

• 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 all information typically included on the Application for Federal Assistance (SF 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.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov 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 Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov 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: Mr. Ed McDermott, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521 FAX: (202) 502–7691.

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 84.017A),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260. or

By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number

84.017A), 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 the 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 84.017A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 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 Application for Federal Education Assistance (SF 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: The selection criteria for this program are from 34 CFR sections 655.31, 660.31, 660.32, and 660.33 and are as follows—

For instructional materials—

Need for the project (10 points); Potential for the use of materials in programs to others (5 points); Account of related materials (10 points); Likelihood of achieving results (10 points); Expected contribution to other programs (10 points); Plan of operation (10 points); Quality of key personnel (10 points); Budget and cost effectiveness (5 points); Evaluation plan (15 points); Adequacy of resources (5 points); Description of final format (5 points); and Provisions for pre-testing and revision (5 points).

For research, surveys and studies—

Need for the project (10 points); Usefulness of expected results (10 points); Development of new knowledge (10 points); Formulation of problems and knowledge of related research (10 points); Specificity of statement of procedures (5 points): Adequacy of methodology and scope of project (10 points); Plan of operation (10 points); Quality of key personnel (10 points); Budget and cost effectiveness (5 points); Evaluation plan (15 points); and Adequacy of resources (5 points).

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 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 period, 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. Grantees are required to use the electronic data instrument Evaluation of Exchange, Language, International, and Area Studies (EELIAS) to complete the final report. Electronically formatted instructional materials such as CDs, DVDs, videos, computer diskettes and books produced by the grantee as part of the grant approved activities are also acceptable as final reports.

VII. Agency Contact

For Further Information Contact: Mr. Ed McDermott, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6082, Washington, DC 20006–8521. Telephone: (202) 502–7636 or by e-mail: *ed.mcdermott@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 13, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–20783 Filed 10–13–05; 4:03 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Language Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.229A.

Dates: Applications Available: October 17, 2005.

Deadline for Transmittal of Applications: See the chart listed under section IV. Application and Submission Information, 3. *Submission Dates and Times* (chart).

Eligible Applicants: Institutions of higher education (IHEs) and combinations of IHEs.

Estimated Available Funds: The Administration has requested $4,925,000 for the Language Resource Centers program for FY 2006, of which we intend to use an estimated $4,925,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $351,786.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Language Resource Centers Program provides assistance to establish, strengthen and operate centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 669.22). Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: Centers that focus on languages spoken in the following world regions: Africa, Inner Asia, Middle East, South Asia, or Southeast Asia.

Invitational Priority 2: Research conducted on new and improved methods for teaching foreign languages, including the use of technology and the dissemination of the research results.

Invitational Priority 3: Collaboration with Title VI National Resource Centers, Language Resource Centers, Centers for International Business Education, and American Overseas Research Centers in conducting development and dissemination activities with the objective of increasing the nation's capacity to produce Americans with advanced proficiency in the less and least commonly taught languages and an understanding of the societies in which those languages are spoken.

Program Authority: 20 U.S.C. 1123.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR parts 655 and 669.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $4,925,000 for the Language Resource Centers program for FY 2006, of which we intend to use an estimated $4,925,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $351,786.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs and combinations of IHEs.

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:* Mr. Ed McDermott, U.S. Department of Education, 1990 K Street, NW., room 6084, Washington, DC 20006–8521. Telephone: (202) 502–7636 or by e-mail: *ed.mcdermott@ed.gov* or visit *http://www.ed.gov/HEP/iegps* to download an application package.

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 program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: October 17, 2005.

Deadline for Transmittal of Applications: In light of the damage caused by Hurricanes Katrina and Rita we are establishing two separate deadlines for the submission of applications for grants under this

competition to permit potential applicants affected by Hurricanes Katrina and/or Rita additional time to submit their applications. We are establishing a *General Deadline* for all applicants, and an *Extended Deadline* for potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. Specifically, the *Extended Deadline* applies only to: (1) Institutions of higher education, SEAs, LEAs, non-profit organizations and other public or private organization applicants that are located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (sees *http://www.fema.gov/news/disasters.fema*) and that were adversely affected by Hurricanes Katrina and/or Rita, and (2) individual applicants who reside or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (see *http://www.fema.gov/news/disasters.fema*) and were adversely affected by Hurricanes Katrina and/or Rita. These applicants must provide a certification in their application that they meet the criteria for submitting an application on the *Extended Deadline,* and be prepared to provide appropriate supporting documentation, if requested. If the applicant is submitting the application electronically, submission of the application serves as the applicant's attestation that they meet the criteria for submitting an application on the *Extended Deadline.*

The following chart provides the applicable deadlines for the submission of applications. If this program is subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

	Transmittal of applications	Intergovernmental review
General Deadline	11/16/05	N/A
Extended Deadline	12/1/05	N/A

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). 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.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 Language Resource Centers Program–CFDA Number 84.229A must be submitted electronically using the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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.*

You may access the electronic grant application for Language Resource Centers at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at: *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*) and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.
- 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 all information typically included on the Application for Federal Education Assistance (SF 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.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov 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 Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov 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: Mr. Ed McDermott, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521; Phone (202) 502–7626 Fax: (202) 502–7691.

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 84.229A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.229A), 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 the 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 84.229A), 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 Application for Federal Education Assistance (SF 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: The selection criteria for this competition are from 34 CFR sections 655.31, 669.20, 669.21, and 669.22 and are as follows—

Plan of operation (15 points); Quality of key personnel (10 points); Adequacy of resources (5 points); Need and potential impact (20 points); Likelihood of achieving results (10 points); Description of final form of results (10

points); Evaluation plan (20 points); Budget and cost-effectiveness (10 points); and Priorities (20 points).

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 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 period, 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. Grantees are required to use the electronic data instrument Evaluation of Exchange, Language, International, and Area Studies (EELIAS) to complete the final report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mr. Ed McDermott, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6082, Washington, DC 20006–8521. Telephone: (202) 502–7636 or by e-mail: *ed.mcdermott@ed.gov.*

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Dated: October 13, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–20784 Filed 10–13–05; 4:03 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Revision to the Record of Decision for the Department of Energy's Waste Management Program

AGENCY: Department of Energy.

ACTION: Revision to record of decision.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 1021.315, is revising the *Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste,* issued on January 20, 1998 (63 FR 3629) and revised previously on December 29, 2000 (65 FR 82985) and July 13, 2001 (66 FR 38646). On September 6, 2002 (67 FR 56989) and June 30, 2004 (69 FR 39446) the Department decided to send the waste from Battelle Columbus Laboratory West Jefferson site to the Hanford Site. The Department has now decided to transfer approximately 37 cubic meters of transuranic (TRU) waste generated as part of the cleanup of the Battelle Columbus Laboratory West Jefferson site near Columbus, Ohio, to the Savannah River Site (SRS) and/or the Waste Control Specialists (WCS) site near Andrews, Texas for either characterization or storage until the waste can be disposed of at the Waste Isolation Pilot Plant (WIPP) in New Mexico. Both SRS and WCS offer viable storage options for the Battelle TRU waste. Pursuant to this decision, DOE may ship all of the Battelle TRU waste to either SRS or WCS, or it may choose to ship a portion of the waste to SRS and the remainder of the waste to WCS.

The Remote-Handled (RH) TRU waste (approximately 25 cubic meters, including about 3 cubic meters of mixed TRU waste [containing both radioactive and hazardous components]) would be stored at SRS or WCS for up to five years. The CH–TRU waste (approximately 12 cubic meters, including about 2 cubic meters of mixed TRU waste) would be characterized at SRS under the existing characterization program and shipped to WIPP for disposal or stored at WCS for up to five years. If DOE's request for modification of the WIPP hazardous waste facility permit currently pending before the New Mexico Environment Department is granted without substantial change, DOE may be able to ship the Battelle West Jefferson TRU waste from SRS or WCS to WIPP near Carlsbad, NM for disposal, without additional characterization. If additional characterization is necessary prior to disposal at WIPP, the Battelle West Jefferson TRU waste may be shipped from SRS or WCS to another DOE site for characterization.

DOE has prepared a Supplement Analysis (SA) in accordance with DOE NEPA regulations (10 CFR 1021.314) to determine whether the proposed off-site shipment of the Battelle West Jefferson TRU waste for storage at SRS or WCS prior to disposal at WIPP is a substantial change to the proposal or whether there are significant new circumstances or information relevant to environmental concerns such that a supplement to the WM PEIS or a new EIS would be needed. Based on the SA, DOE has determined that a supplement to the WM PEIS or a new EIS is not needed.

FOR FURTHER INFORMATION CONTACT: Copies of the Waste Management Programmatic Environmental Impact Statement (WM PEIS), the 1998 WM PEIS ROD for TRU waste, the revised WM PEIS RODs for TRU waste, this revised ROD, and the *Supplement Analysis for Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio* (DOE/EIS–0200–SA–02) will be available on DOE's National Environmental Policy Act (NEPA) Web site at: *http://www.eh.doe.gov/nepa* under DOE NEPA Documents. To request copies of any of these documents, please write or call:

The Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, Telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

For further information regarding the storage, characterization, and disposal of Battelle West Jefferson TRU waste, or to obtain copies of the Supplement

Analysis discussed herein, contact: Mr. Harold Johnson, Carlsbad Field Office, U.S. Department of Energy, 4021 National Parks Highway, Carlsbad, NM 88220, Telephone: 505–234–7349.

For further information on the DOE program for the management of TRU waste or this revision to the ROD, contact: Ms. Lynne Smith, Office of Environmental Management, U.S. Department of Energy, 19001 Germantown Road, Germantown, MD 20874, Telephone: 301–903–6828.

For information on DOE's NEPA process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

TRU waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram. TRU waste is classified according to the radiation dose at a package surface. CH–TRU waste has a radiation dose rate at a package surface of 200 millirem per hour or less; this waste can safely be handled directly by personnel. RH–TRU waste has a radiation dose rate at a package surface greater than 200 millirem per hour, and must be handled remotely (*e.g.*, with machinery designed to shield workers from radiation). Mixed TRU waste contains both radioactive and hazardous components.

The 37 cubic meters of TRU waste at the Battelle West Jefferson site consist of approximately 12 cubic meters of CH–TRU waste and approximately 25 cubic meters of RH–TRU waste. At the Battelle West Jefferson site, most of the CH–TRU waste is stored in six standard waste boxes in three concrete shielding units. One additional 30 gallon drum of possible CH–TRU waste (this waste was originally thought to be low-level waste, but may eventually be determined to be TRU waste due to the presence of americium) is stored in a locked cargo container at the Battelle site. The RH–TRU waste is contained in 110 55-gallon drums (stored in 11 concrete shielding units) and two RH–TRU 72–B shipping casks (the two shipping casks hold a total of five drums).

In the WM PEIS, DOE analyzed the potential environmental impacts of the management (treatment and storage) of TRU waste at DOE sites (DOE estimated that 580 cubic meters of RH–TRU waste had been generated and was being stored at the Battelle West Jefferson site but did not specifically analyze the treatment or storage of that TRU waste at off-site locations). In the 1998 WM PEIS ROD for TRU waste, DOE decided that ''each of the Department's sites that currently has or will generate TRU waste will prepare and store its waste on site'' prior to shipment to WIPP. (The only exception to this decision was the Sandia National Laboratory in New Mexico, which will ship its waste to the Los Alamos National Laboratory for disposal preparation and storage before disposal at WIPP.) DOE also noted that ''in the future, the Department may decide to ship transuranic wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability,'' stating that ''[t]ransportation of TRU waste would occur only in situations where the sites at which the waste is located lack the capability to prepare it for disposal.'' The WM PEIS ROD also stated that the sites that could receive TRU waste shipments from other sites were the Idaho National Laboratory (formerly known as the Idaho National Engineering and Environmental Laboratory), Oak Ridge National Laboratory, the SRS, and the Hanford Site, and that such decisions would be subject to appropriate review under NEPA.

In the WIPP SEIS–II, DOE analyzed the potential environmental impacts associated with disposing of TRU waste at WIPP. DOE's Proposed Action was to open WIPP and dispose of 175,600 cubic meters of defense TRU waste; this waste volume included 580 cubic meters of Battelle West Jefferson RH–TRU waste. In addition, DOE analyzed several action alternatives that would consolidate waste from some smaller-quantity DOE sites at Oak Ridge National Laboratory, SRS, and Hanford.

In the Savannah River Site Waste Management Final Environmental Impact Statement (SRS WM EIS) (DOE 1995) DOE examined the environmental impacts of alternative strategies for managing various waste types (including TRU wastes) at SRS. In its initial ROD, DOE selected an alternative that included storage of TRU waste at SRS. In a subsequent ROD, DOE decided to construct and operate a TRU waste characterization/certification facility to characterize, repackage, and certify CH–TRU waste for disposal at WIPP.

The Battelle West Jefferson facility is privately owned; however, as part of the closeout of its nuclear materials research contract, DOE is assisting in the remediation of the site. Contract terms specify that all radioactive waste generated during the facility cleanup is ''DOE-owned'' for the purposes of disposal. The TRU waste must be shipped off-site by December 2005, to comply with Battelle's NRC license, which will expire at the end of 2005. Removal of the TRU waste from the Battelle West Jefferson site is required to allow site closure in fiscal year 2006. The Battelle West Jefferson TRU waste is not eligible for direct shipment to WIPP for disposal because the Battelle West Jefferson facility does not have the capability to certify the CH–TRU waste for disposal and WIPP is not yet authorized by the State of New Mexico to accept RH–TRU waste for disposal. Because the Battelle West Jefferson site is closing, developing the capability at that site to certify TRU waste for disposal is not cost-effective.

In an amended ROD pursuant to the WM PEIS (69 Fed. Reg. 39446, June 30, 2004), DOE decided to send the Battelle West Jefferson TRU waste to the Hanford site for storage and eventual shipment to WIPP. For the reasons described in DOE's Supplement Analysis (described in IV below) and in DOE's Notice of Availability of the Supplement Analysis (70 Fed. Reg. 53353, September 8, 2005), DOE has now decided to ship the waste to SRS or WCS for storage or characterization until the waste can be disposed of at WIPP.

II. Decision

DOE has decided to transfer approximately 37 cubic meters of CH and RH–TRU waste and up to 14 concrete shielding units (in 39 truck shipments) from the Battelle West Jefferson site to SRS and/or WCS. At SRS or WCS, the RH–TRU waste would be stored for a period not to exceed five years. At WCS, the CH–TRU waste would also be stored for up to five years. At SRS, the CH–TRU waste would be characterized under the existing SRS CH–TRU program and shipped to WIPP for disposal. DOE will ship a total of approximately 12 cubic meters of CH–TRU waste in TRUPACT–II shipping casks (up to two truck shipments) and approximately 25 cubic meters of RH–TRU waste in 10–160B and RH–TRU 72–B shipping casks (up to 14 truck shipments). Onsite activities will involve preparing the waste for shipment (loading the waste into the shipping casks and loading the trucks for transport).

If DOE's request for modification of the WIPP hazardous waste facility permit currently pending before the New Mexico Environment Department is granted without substantial change, DOE may be able to ship the Battelle

West Jefferson TRU waste from SRS or WCS to WIPP near Carlsbad, NM for disposal, without additional characterization. If additional characterization is necessary prior to disposal at WIPP, the Battelle West Jefferson TRU waste may be shipped from SRS or WCS to another DOE site for characterization. DOE has identified the Hanford Site, the Idaho National Laboratory, SRS (for waste stored at WCS) and the Oak Ridge National Laboratory as possible characterization sites for this waste. The decision regarding whether to ship the waste directly to WIPP or to another site for characterization will depend on the characterization requirements that are established as a result of DOE's pending Hazardous Waste Facility Permit modification request and the characterization capabilities that are available or planned at the individual sites at the time of any decision. Such a decision would be the subject to appropriate additional National Environmental Policy Act (NEPA) review if required.

III. Basis for the Decision

DOE needs to ship its TRU waste from the Battelle West Jefferson site for offsite storage prior to characterization for disposal at WIPP. However, this waste is not eligible for disposal at WIPP at this time, which results in the need to ship the waste to safe, secure storage until it can be shipped to WIPP. The Battelle West Jefferson site is a privately-owned site subject to regulation by the NRC. The NRC license expires in December 2005, and DOE has committed to close the site in Fiscal Year 2006. Continued storage would violate the current license issued by the NRC.

IV. Supplement Analysis

To determine whether the proposed action would warrant a supplement to the WM PEIS DOE prepared the Supplement Analysis for Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio (DOE/EIS–0200–SA–02) (SA). DOE considered both the SRS and WCS as possible storage sites for the Battelle West Jefferson TRU waste. Each site has advantages. For example, the shorter transportation route between Battelle and SRS would mean waste removal from Battelle could be accomplished more quickly. Also, the CH–TRU waste could be characterized at SRS and sent to WIPP for disposal, thus minimizing the amount of waste that would have to be stored. WCS, on the other hand, is close to WIPP, and subsequent transportation to WIPP for disposal could have less impact if, under the permit modification to be issued by the State of New Mexico, the waste can eventually be shipped to WIPP without further characterization.

Preparation for Shipment. As discussed in the SA, it is expected that seven or eight workers would be involved in preparing the waste for shipment. Based on past experience with TRU waste handling at the Battelle West Jefferson site, DOE estimates that worker exposure would be less than 0.5 person-rem, a level that is equivalent to a risk of a latent cancer fatality of 2.5×10^{-4}. During this period, access to the Battelle West Jefferson site would be controlled, so there would be no exposure of the public to radiation.

If a TRU waste drop accident were to occur, DOE's analysis concluded that all radiation doses would be below 100 mrem per accident and external exposures from groundshine would be less than 1 mrem per hour. Total dose to the maximally exposed member of the public would be 4.2×10^{-2} rem, resulting in a risk of a latent cancer fatality of 2.5×10^{-5}. The accident with the highest dose, a drop accident involving a drum of RH–TRU waste, had an estimated radiation dose of 8.5×10^{-2} rem. This is equivalent to a risk of a latent cancer fatality of 5.1×10^{-5} to the maximally exposed individual.

Transportation and Unloading. The total calculated fatalities from all shipments to either SRS or WCS are much less than one (3.5×10^{-3} for shipments to SRS and 5.0×10^{-3} for shipments to WCS). The transportation impacts would include those from the shipment of the Battelle West Jefferson TRU waste (up to 16 shipments), shipments of characterized CH–TRU waste from SRS to WIPP (up to 2 shipments) and the shipment of concrete shielding units in which the waste could be stored (up to 39 shipments). The radiation dose to workers as a result of unloading the waste at SRS or WCS would be less than 0.5 person-rem. This is the equivalent to the risk of a latent cancer fatality of 2.5×10^{-4}.

Storage of TRU waste. Based on the one year of experience with monitoring and maintenance of the TRU waste storage pad at the Battelle West Jefferson site, DOE estimates that routine exposures from monitoring, inspection and maintenance activities for TRU waste (stored in 14 concrete storage units, two RH–TRU 72–B casks, and in one drum in a locked cargo container) results in a total exposure of no more than 8×10^{-3} person-rem at the Battelle West Jefferson site annually. Assuming a 5-year storage period at SRS or WCS, the total worker exposure would be no more than 4×10^{-2} person-rem (8×10^{-3} person-rem for 5 years). This is equivalent to the risk of a latent cancer fatality of 2.0×10^{-5}. Radiation surveys at the Battelle West Jefferson site have verified that radiation exposures beyond the storage area would be at background levels, so the exposure to noninvolved workers and the general public at SRS or WCS would be zero.

The impacts to workers of a TRU waste accident during unloading or storage at SRS or WCS would be similar to the accident impacts for a waste container drop during loading at the Battelle West Jefferson site. The impacts to the MEI would be expected to be less than at the Battelle West Jefferson site because the MEI would be farther away from the accident at SRS or WCS.

Characterization of CH–TRU waste—DOE estimates that worker exposure from characterizing the CH–TRU waste at SRS would be about 0.005 person-rem, which is the equivalent of a latent cancer risk of 2.5×10^{-6} for the involved workers. The impacts from characterizing RH–TRU waste at SRS would be about 0.03 person-rem which is the equivalent of a latent cancer risk of 1.5×10^{-5} for the involved workers. A characterization accident would be expected to result in an exposure of about 9.0×10^{-6} rem for the MEI, which is the equivalent of a latent cancer risk of 5.4×10^{-9}.

In the SA, DOE analyzed the health, environmental and transportation impacts of shipping the Battelle West Jefferson TRU waste to SRS or WCS. DOE concluded that the potential impacts identified would not exceed impacts reported in the WM PEIS or the WIPP SEIS–II. DOE published a Notice of Availability of the SA in the **Federal Register** on September 8, 2005 (70 Fed. Reg. 53353). DOE stated that it would issue an amended ROD no sooner than 30 days after publication of the Notice, and that it would consider public comments received during this period.

V. Response to Public Comments on the Supplement Analysis

DOE received two comments during the 30-day public notification of the availability of the SA, which commenced on September 8, 2005. One commenter objected to shipping the Battelle waste and storing it until it can ''theoretically'' be disposed of at a ''potential future'' WIPP site, citing concerns about ''leaking valves'' on casks used for transportation of wastes. The commenter stated that the safest way to treat radioactive waste is to leave

the waste ''in the ground where it is'' rather than expose the public to risk by transporting the waste to another site.

DOE cannot leave the waste at Battelle since to do so would violate the NRC requirements for continued storage of this waste. The waste is currently in aboveground storage, rather than ''in the ground'' and poses some continuing risk to the surrounding population. The waste will be transported to another site in NRC approved TRU waste casks that are sealed to prevent leakage. The WIPP site is an existing deep underground disposal site that is designed to isolate the waste from humans and the environment.

One commenter stated that DOE cannot choose WCS as a storage site for the Battelle West Jefferson waste. The commenter asserted that, because WCS was not included as an alternative in the WM PEIS and because DOE has not conducted an analysis of the environmental impacts of storage at the WCS site, DOE cannot choose WCS as a storage site without completing a supplemental WM PEIS that includes WCS as an alternative. The commenter also asserted that storage at WCS is inappropriate because WCS, as a non-DOE site, is unable to prepare the waste for shipment to WIPP, while SRS (and other DOE sites considered in the WM PEIS) could. The commenter further asserted that the definition of interim storage contained in the WCS license would prevent storage of the Battelle West Jefferson Waste because the waste does not meet WIPP waste acceptance criteria. In addition, the commenter states that DOE should have considered Oak Ridge National Laboratory (ORNL) and Idaho National Laboratory (INL) as possible alternative storage sites for this waste and it should have provided a more extensive discussion of the alternative of continued onsite storage at the Battelle West Jefferson site.

Although the WM PEIS did not analyze waste management actions at commercial sites, DOE is not precluded from using such sites. Further, based on the conclusions in the SA, DOE does not believe that a supplemental EIS is needed.

There is no requirement that a site be a DOE site before a waste characterization program can be established at that site. The definition of interim storage does not prevent WCS from storing the Battelle West Jefferson waste. Under the definition cited by the commenter, the waste would have to be properly packaged and meet the waste acceptance criteria for ''an authorized disposal facility, or an authorized federal agency.'' However, even if the waste does not meet the waste acceptance criteria for WIPP (the authorized disposal facility), the waste will meet the waste acceptance criteria for a DOE site (*e.g.* SRS) before it would be sent to WCS for storage. This would be sufficient to meet the definition of the WCS license.

The alternatives of sending the waste to ORNL or INL were considered in the WM PEIS and not chosen in the original Record of Decision. DOE is not reconsidering that decision at this time. The alternative of continued storage at Battelle is unacceptable because NRC has indicated it will not renew the Battelle license for this waste.

The SA reviewed the potential health and environmental impacts of the new proposed action as compared to those identified in the WM PEIS, the WIPP SEIS–II, and the SRS Waste Management EIS. The potential impacts of the proposed action are very small and would not add significantly to those previously reported.

DOE has determined, therefore, that the proposed actions would not, either under incident-free or accident conditions, present a substantial change relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Therefore, DOE determined that a supplemental EIS or a new EIS is not required under 40 CFR 1502.9(c) or 10 CFR 1021.314(c) to implement this proposal.

Issued in Washington, DC, this 12th day of October 2005.

Dr. Inés R. Triay,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 05–20804 Filed 10–17–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7984–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address petitions for review filed by the American Chemistry Council, the General Electric Company and the Coke Oven Environmental Task Force (collectively ''petitioners''). *Stan Stephens, et al.* v. *EPA*, Nos. 04–1112, 04–1117, 04–1118, and 04–1119 (D.C. Cir.). In April 2004, petitioners filed petitions for review challenging the final EPA rule entitled ''National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline); Final Rule'' (''OLD''). 69 FR 5038 (February 3, 2004). Under the terms of the proposed settlement agreement, EPA has agreed that: On or before October 31, 2005, the EPA Administrator will sign a notice of proposed rulemaking to amend the OLD as provided in Attachment A to the Settlement Agreement; As part of the proposed amendments to the OLD, EPA will include language in the preamble as provided in Attachment B to the Settlement Agreement; and within 180 days of the date the comment period on the proposed amendments closes, EPA will sign a notice of final rulemaking.

DATES: Written comments on the proposed settlement agreement must be received by November 17, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0014, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Mike Thrift, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–5596.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

This case concerns challenges to the rule entitled ''National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline); Final Rule'' (''OLD''). 69 FR 5038 (February 3, 2004). These standards are based on the performance of Maximum Achievable Control Technology (MACT), and implement section 112 (d) of the Clean Air Act.

Under the terms of the proposed settlement agreement, EPA has agreed that: (1) On or before October 31, 2005, the EPA Administrator will sign a notice of proposed rulemaking to amend the OLD as provided in Attachment A to the Settlement Agreement; (2) As part of the proposed amendments to the OLD, EPA will include language in the preamble as provided in Attachment B to the Settlement Agreement; (3) Within 180 days of the date the comment period on the proposed amendments closes, EPA will sign a notice of final rulemaking.

Petitioners have agreed to dismiss their petitions for review if EPA takes final action amending the OLD in a manner substantially the same as the amendments set forth in Attachment A and not substantially inconsistent with the language in Attachment B.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get A Copy Of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0014 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 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 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.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on 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. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. 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.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 6, 2005.

Brenda Mallory,

Acting Principal Deputy General Counsel, Office of General Counsel.

[FR Doc. 05–20814 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7984–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept requests, from December 1, 2005 through January 31, 2006, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their

response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2006, EPA will consider funding requests up to a maximum of $1.5 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 1, 2005. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2006.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are as follows:

Region	States	Mailing address
EPA Region 1; Diane Kelley	CT, ME, MA, NH, RI, VT	One Congress Street, Boston, MA 02114–2023.
EPA Region 2; Larry D'Andrea	NJ, NY, PR, VI	290 Broadway, 18th Floor, New York, NY 10007.
EPA Region 3; Tom Stolle	DE, DC, MD, PA, VA, WV	1650 Arch Street, Philadelphia, PA 19103.
EPA Region 4; Rosemary Patton	AL, FL, GA, KY, MS, NC, SC, TN	Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303.
EPA Region 5; Deborah Orr	IL, IN, MI, MN, OH, WI	77 West Jackson Blvd., Chicago, IL 60604–3507.
EPA Region 6; Stan Hitt	AR, LA, NM, OK, TX	1445 Ross Ave., Suite 1200, (6SF–PB), Dallas, TX 75202–2733.
EPA Region 7; Jim Callier	IA, KS, MO, NE	901 N. 5th Street, Kansas City, KS 66101.
EPA Region 8; Kathie Atencio	CO, MT, ND, SD, UT, WY	999 18th Street, Suite 300 (EPR–B), Denver, CO 80202–2406.
EPA Region 9; Carolyn Douglas	AZ, CA, HI, NV, AS, GU	75 Hawthorne Street, SFD 1–1, San Francisco, CA 94015.
EPA Region 10; Timothy Brincefield	AK, ID, OR, WA	1200 Sixth Avenue (ECL–112), Seattle, WA 98101.
Headquarters; Jennifer Millett Wilbur		U.S. EPA, Office of Brownfields Cleanup & Redevelopment. 1200 Pennsylvania Ave., NW, MC 5105T, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a $50 million grant program [1] to establish and enhance state [2] and tribal [3] response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable states and tribes to apply for and use section 128(a) funds in Fiscal Year 2006.

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfield sites across the country. The depth and breadth of state and tribal response programs vary. Some focus solely on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a),[4] Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and tribes.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a ''public record.'' The secondary goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response program's capacity.

Subject to the availability of funds, EPA will be available to provide technical assistance to states and tribes as they apply for and carry out section 128(a) grants.

Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

- Demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; *or* (b) be a party to voluntary response program Memorandum of Agreement (VRP MOA) [5] with EPA; *AND*
- Maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, *see* CERCLA section 128(b)(1)(C).

Matching Funds/Cost-Share

With the exception of the section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA section 104(k)(3), states and tribes are *not* required to provide matching funds for grants awarded under section 128(a).

The Four Elements—Section 128(a)

Section 128(a) recipients that do not have a VRP MOA with EPA, must

[1] The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program is 66.817.

[2] The term ''state'' is defined in this document as defined in CERCLA section 101(27).

[3] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** notice at 67 FR 67181, are also eligible for funding under CERCLA section 128(a).

[4] The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends CERCLA by adding section 128(a).

[5] The legislative history of SBLRBRA indicates that Congress intended to encourage states and Tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for section 128(a) funding.

demonstrate that their response program includes, or is taking reasonable steps to include, four elements. Section 128(a) also authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement.

Generally, the four elements are:

Timely survey and inventory of brownfield sites in state or tribal land. EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfield sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a ''list'' of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment grantees conduct inventories of brownfield sites in their communities or jurisdictions. EPA encourages states and tribes to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

Oversight and enforcement authorities or other mechanisms and resources. EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that a response action will protect human health and the environment and be conducted in accordance with applicable federal and state law; and the necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

Mechanisms and resources to provide meaningful opportunities for public participation.[6] EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms and resources for public participation, including, at a minimum:

- Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- Prior notice and opportunity for public comment on cleanup plans and site activity; and
- A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional to the person conducting the response action that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

Public Record Requirement

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, described below, in order to receive funds. Recipients receiving section 128(a) funding for the first time in FY06 must demonstrate that they established and maintained the public record, as describe below, to be eligible for funding in FY07.

Specifically, under section 128(b)(1)(C), states and tribes must:

- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
- Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

Distinguishing the ''survey and inventory'' element from the ''public record.'' It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to a general approach to identifying brownfield sites.

Making the public record easily accessible. EPA's goal is to enable states and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the ''survey and inventory'' element, available to the public via the internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[7] A state or tribe may also choose to use the section 128(a) funds to make their survey and inventory information available on the internet as well.

In an effort to reduce grant reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of grant funding only, deem the public record reporting requirement met.

Long-term maintenance of the public record. EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action

[6] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://www.epa.gov/superfund/action/community/index.htm.*

[7] For further information on latitude and longitude information, please see EPA's data standards Web site available at *http://oaspub.epa.gov/edr/epastd$.startup.*

has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.[8]

Use of Funding

Overview

Section 128(a)(1)(B) describes the eligible uses of grant funding by states and tribes. In general, a state or tribe may use a grant to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and tribes may use section 128(a) funding to, among other things:

- Develop legislation, regulations, procedures, ordinances, guidance, etc. that would establish or enhance the administrative and legal structure of their response programs;
- Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20% match on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA grant funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply;
- Purchase environmental insurance or develop a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program;
- Establish and maintain the required public record described above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a); or
- Conduct limited site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements.

[8] States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at *http://www.epa.gov/superfund/action/ic/index.htm.*

Uses Related to ''Establishing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, or guidance. For more developed state or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

Uses Related to ''Enhancing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''enhance'' is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program. The exact ''enhancement'' uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, e.g., RCRA or USTs. Other ''enhancement'' uses may be allowable as well.

Uses Related to Site-Specific Activities

States and tribes may use section 128(a) funds for activities that improve state or tribal capacity to increase the number of sites at which response actions are conducted under the state or tribal response program.

Eligible uses of funds include, but are not limited to, site-specific activities such as: oversight of response action; technical assistance to federal brownfields grant recipients; development and/or review of site-specific quality assurance project plans (QAPPs); preparation and submission of Property Profile Forms; auditing site cleanups to verify the completion of the cleanup; conducting assessments or cleanups at *brownfields* sites.

Uses Related to Site-Specific Assessment and Cleanup Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups must comply with all applicable federal and state laws and are subject to the following restrictions:

- Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfield site at CERCLA section 101(39).
- No more than $200,000 per site can be funded for assessments with section 128(a) funds, and no more than $200,000 per site can be funded for cleanups with section 128(a) funds.
- Absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and clean up sites owned by the recipient.
- Assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA section 107, except at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I).
- Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted.

Costs Incurred for Activities at ''Non-Brownfields'' Sites

Costs incurred for activities at non-brownfields sites, e.g., oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. For example, auditing completed site cleanups in jurisdictions where states or tribes use licensed site professionals, to verify that sites have been properly cleaned up, may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or tribe. However, assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA section 101(39).

Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are

allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under the CERCLA section 104(k)(3) RLF program.

General Programmatic Guidelines for 128(a) Grant Funding Requests

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement [9] with a state or tribe. The program is administered under the general EPA grant and cooperative agreement regulations for states, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the grantee for section 128(a) grant program is: ''The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.'' 40 CFR 31.3.

One application per state or tribe. Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested states or tribes. *EPA will accept only one application from each eligible state or tribe.*

Define the State or Tribal Response Program. States and tribes must define in their work plan the ''section 128(a) response program(s)'' to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

Separate cooperative agreements for the capitalization of RLFs using section 128(a) funds. If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded, i.e., one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

Authority to Manage a Revolving Loan Fund Program. If a state or tribes chooses to use its section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the authority to manage the program, e.g., issue loans. If the agency/department listed as the point of contact for the section 128(a) grant does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

Section 128(a) grants are eligible for inclusion in the Performance Partnership Grant (PPG). States and tribes may include section 128(a) grants in their PPG. (69 FR 51756 (2004)) Section 128(a) funds used to capitalize an RLF are not eligible for inclusion in the PPG.

Project Period. EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's grants policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

Demonstrating the Four Elements. As part of the annual work plan negotiation process, states or tribes that do not have MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

Establishing and Maintaining the Public Record. Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described above, exists and is being maintained.[10]

- *States or tribes that received initial funding in FY03 and FY04:* FY06 requests will *not* be accepted from states or tribes that fail to demonstrate, by the January 31, 2006 request deadline, that they established and maintaining a public record. (Note, this would potentially impact any state or tribe that had a term and condition placed on their FY05 grant award that prohibited drawdown of FY05 funds prior to meeting public record requirement.) States or tribes in this situation will not be prevented from drawing down their prior year funds, once the public record requirement is met, but will be restricted from applying for FY06 funding.
- *States or Tribes that received initial funding in FY05:* By the time of the actual FY06 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY06 grant that prevents the drawdown of FY06 funds until the public record requirement is met).
- *Recipients receiving funds for the first time in FY06:* These recipients have one year to meet this requirement and may utilize the section 128(a) grant funds to do so.

Demonstration of Significant Utilization of Prior Years Funding

During the allocation process, EPA headquarters places significant emphasis on the utilization of prior years' funding. When submitting your FY06 request, the following information must be submitted:

- For those states and tribes with active Superfund VCP Core or Targeted Brownfields Assessment cooperative agreements awarded under CERCLA section 104(d), you must provide, by agreement number, the amount of funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse) and must provide a detailed explanation and justification for why such funds should not be considered in the funding allocation process.
- For those states and tribes that received section 128 funds in FY03 and 04, you must provide the amount of FY03 and FY04 funds that have not been requested for reimbursement (i.e, those funds that remain in EPA's Financial Data Warehouse) and must provide a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

Note: EPA Regional staff will review EPA's Financial Database Warehouse to confirm the amount of outstanding funds reported. It is strongly recommended that you work with your regional counterpart to determine the

[9] A cooperative agreement is a grant to a state or a tribe includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

[10] For purposes of grant funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the section 128(a) funding.

amount of funds ''outstanding.'' In making this determination, EPA will take into account those funds that have been committed through an appropriate state or tribal contract, inter-agency agreement, or similar type of binding agreement, but have not been requested for reimbursement, i.e., that are not showing as ''drawn down'' in EPA's Data Warehouse.

Demonstration of Need To Receive Funds above the FY05 Funding Distribution

Due to the limited amount of funding available, recipients must demonstrate a specific need when requesting an amount above the amount allocated to the state or tribe in FY05.

Allocation System and Process for Distribution of Fund

EPA regional offices will work with interested states and tribes to develop their annual work plans and funding requests. For Fiscal Year 2006, EPA will consider funding requests up to a maximum of $1.5 million per state or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding.

After the January 31, 2006 deadline, regional offices will submit summaries of state and tribal requests to EPA headquarters. Before submitting requests to EPA headquarters, Regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of prior funding, and funds remaining from prior years, etc.

After receipt of the Regional recommendations, EPA headquarters will consolidate requests and allocate funds accordingly.

Information To Be Submitted With the Funding Request

States and tribes requesting section 128 funds for FY06 must submit the following information, as applicable, to their regional contact on or before January 31, 2006 (Regions may requests additional information, as needed):

• For those states and tribes with prior Superfund VCP Core or Targeted Brownfields funding awarded under CERCLA section 104(d), provide, by agreement number, the amount of funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse) and a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

• For those states and tribes that received an FY03 and/or FY04 128 allocation, provide the amount of FY03 and/or FY04 funds that have not been requested for reimbursement (i.e, those funds that remain in EPA's Financial Data Warehouse) and a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

• For those states and tribes requesting amounts above their FY05 allocation, provide an explanation of the specific need(s) that triggered the request for increased funding.

• All states and tribes requesting funds for FY06 must submit a summary of the planned use of the funds with associated dollar amounts. Please provide it in the following format, if possible:

Funding use	Requested amount	Summary of intended use (example uses)
''Establish or Enhance'' the four elements.	$XX,XXX	—Develop a community involvement process. —Fund an outreach coordinator. —Develop/enhance ordinances, regulations, procedures for response programs. —Issue public notices of site activities. —Review cleanup plans and verify completed actions.
Establish and Maintain the Public Record.	XX,XXX	—Maintain public record. —Create web site for public record. —Disseminate public information on how to access the public record.
''Enhance the Response Program or Cleanup Capacity''.	XX,XXX	—Hire additional staff for oversight of brownfields cleanups. —Attend training and conferences on brownfields cleanup technologies and other brownfields topics. —Perform program management activities. —Negotiate/manage contracts for response programs. —Enhance program management and tracking systems.
Site-specific Activities	XX,XXX	—Perform 10 site assessments in rural communities. —Negotiate brownfields agreements/voluntary cleanup contracts. —Provide technical assistance to federal brownfields grant recipients. —Develop and/or review QAPPs. —Conduct cleanup activities at brownfields sites. —Prepare Property Profile Forms.
Environmental Insurance	XX,XXX	—Review potential uses of environmental insurance.
Revolving Loan Fund	XX,XXX	—Create a cleanup revolving loan fund.
Total Funding Requested	XXX,XXX	

General Funding Priorities

When EPA Regions negotiate individual state and tribal work plans, it is anticipated that funding will be prioritized as follows:

• Funding of program activities that establish and/or enhance the four elements of a state or tribal response program and to enable states and tribes to comply with the public record requirement, including activities related to institutional controls. (States and tribes that have established one or more of the four elements will not be prejudiced in funding distributions if their work plan includes activities that enhance the four elements. States with MOAs will not be prejudiced in funding distributions if their work plan does not include tasks related to establishing or enhancing the four elements.)

• Activities that develop and maintain the public record.

• Program development and implementation activities that enhance the response program or the cleanup capacity of a state or tribal response program.

• Site-specific activities, as negotiated and approved by EPA.

• Funding for environmental insurance mechanisms.

• Funding to capitalize brownfields cleanup revolving loan funds.

EPA will target funding of at least $3 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $3 million in the next fiscal year. It is expected that the funding demand from tribes will increase through the life of this grant program (authorized by Congress through FY2006), and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

Progress Reports. In accordance with 40 CFR 31.40, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) grant. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan and should provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing or, if already established, maintaining the public record.

Reporting Requirements. Depending upon the activities included in the state's or tribe's work plan, an EPA regional office may request that a progress report include:

Information related to the public record. All recipients must report information related to establishing or, if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, *e.g.*, website or other public database to meet this requirement.

For the purposes of grant funding only, and depending upon the activities included in the state or tribe's work plan, this *may* include:

A list of sites at which response actions have been completed including:

• Date the response action was completed.

• Site name.

• The name of owner at time of cleanup, if known.

• Location of the site (street address, and latitude and longitude).

• Whether an institutional control is in place;

• Explain the type of the institutional control in place (*e.g.*, deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.)

• Nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.)

• Size of the site in acres.

A list of sites planned to be addressed by the state or tribal response program including:

• Site name and the name of owner at time of cleanup, if known.

• Location of the site (street address, and latitude and longitude).

• To the extent known, whether an institutional control is in place;

• Explain the type of the institutional control in place (*e.g.*, deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.)

• To the extent known, the nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.)

• Size of the site in acres.

Reporting environmental insurance. Recipients with work plans that include funding for environmental insurance must report:

• Number and description of insurance policies purchased (*e.g.*, type of coverage provided; dollar limits of coverage; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.

• The number of sites covered by the insurance.

• The amount of funds spent on environmental insurance (*e.g.*, amount dedicated to insurance program, or to insurance premiums) and the amount of claims paid by insurers to policy holders.

Reporting for site-specific assessment or cleanup activities. Recipients with work plans that include funding for brownfields site assessment or cleanup must complete the OMB-approved Property Profile Form for each completed site assessment and cleanup.

Reporting for other site-specific activities. Recipients with work plans that include funding for other site-specific related activities must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

• Number and frequency of oversight audits of licensed site professional certified cleanups.

• Number and frequency of state/tribal oversight audits conducted.

• Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities.

• Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

Reporting for RLF uses. Recipients with work plans that include funding for Revolving Loan Fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF grants.

Reporting for Non-MOA states and tribes. All recipients *without* a Voluntary Response Program MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element *may* include:

• A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example: legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements); policies and procedures to implement legal authorities; and other mechanisms;

• A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the grant;

• A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that: a response action will protect human health and the environment; and be conducted in accordance with applicable Federal and State law; and if the person conducting the response action fails to complete the necessary

response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and

• A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfield site.

Where applicable, EPA may require states/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress. The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan. EPA regions may allow states or tribes to provide performance data in appropriate electronic format. The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

Dated: September 15, 2005.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 05–20823 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7985–4]

Science Advisory Board Staff Office Clean Air Scientific Advisory Committee (CASAC) Notification of Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC or Committee) to review and approve the advisory report of the CASAC Ambient Air Monitoring and Methods (AAMM) Subcommittee (Subcommittee) on its recent peer review of the Federal Reference Method (FRM) for thoracic coarse particulate matter ($PM_{10-2.5}$).

DATES: The teleconference meeting will be held on November 3, 2005, from 1 to 4 p.m. (eastern time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments; or wants further information concerning this teleconference meeting, should contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

CASAC and the AAMM Subcommittee

The CASAC, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the SAB Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

The SAB Staff Office established the CASAC AAMM Subcommittee in early 2004 as a standing subcommittee to provide the EPA Administrator, through the CASAC, with advice and recommendations, as necessary, on topical areas related to ambient air monitoring, methods and networks. The Committee and the Subcommittee comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background

In response to a request from EPA's Office of Air and Radiation (OAR), Office of Air Quality Planning and Standards (OAQPS), the CASAC AAMM Subcommittee conducted a peer review on the FRM for $PM_{10-2.5}$ and a consultation on various particulate matter (PM) monitoring-related issues at a public meeting held September 21–22, 2005 in Durham, NC. Subsequent to that meeting, the Subcommittee drafted an advisory report for the CASAC's consideration. Detailed summary information on EPA's proposed FRM for thoracic coarse particulate matter is contained in a previous **Federal Register** notice (70 FR 51353, August 30, 2005).

Availability of Meeting Materials

The CASAC AAMM Subcommittee's draft advisory report and the final agenda for this teleconference meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casac_aamm_subcom.html* and *http://www.epa.gov/sab* (under ''Meeting Agendas''), respectively, in advance of the CASAC teleconference. Written meeting materials and background information from the Subcommittee's September 21–22, 2005 meeting are posted on the ''CASAC File Area'' page of EPA's Ambient Monitoring Technology Information Center (AMTIC) Web site at: *http://www.epa.gov/ttn/amtic/casacinf.html*.

Questions concerning EPA's ambient air monitoring efforts should be directed to Mr. Tim Hanley, OAQPS, at phone: (919) 541–4417; or e-mail: *hanley.tim@epa.gov*. Questions concerning the Agency's FRM development efforts and $PM_{10-2.5}$ measurement methods evaluation should be directed to Dr. Robert Vanderpool of EPA's Office of Research and Development (ORD), National Exposure Research Laboratory (NERL), at phone: (919) 541–7877; or e-mail: *vanderpool.robert@epa.gov*.

Procedures for Providing Public Comment

The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The SAB Staff Office expects that the public will not repeat previously-submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than October 27, 2005 to reserve time on the November 3, 2005 meeting agenda. Opportunities for oral comments will be limited to five minutes per speaker. *Written Comments:* Written comments should be received in the SAB Staff Office by October 28, 2005 so that the comments may be made available to the members of the members of the CASAC for their consideration. Comments should be supplied to Mr. Butterfield at the contact information provided above, in the following formats: one hard copy (original signature optional), or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)).

Accessibility

For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 11, 2005.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–20826 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7985–3]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of experts who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to discuss potential NACEPT projects over the coming two years, including review of EPA's Strategic Plan, environmental foresight, environmental technology, and environmental indicators. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a two day open meeting on Thursday, November 3, from 8:30 a.m. to 5:30 p.m. and Friday, November 4, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov,* (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–233–0061 or *altieri.sonia@epa.gov.* To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 5, 2005.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 05–20824 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7984–8]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee and its three subcommittees; the Small Community Advisory Subcommittee (SCAS), Water Subcommittee and Indicators Subcommittee will meet on November 2–4, 2005 in Washington, DC. The Committee will be discussing continued local government input to EPA environmental indicators, providing comments to EPA on the Thompson report, and reviewing the status of ongoing projects to advise the Agency on Water infrastructure and full cost accounting, including the special needs of small communities.

The SCAS, Water and Indicators Subcommittees will meet in separate sessions on Wednesday, November 2 at EPA Headquarters located at 1200 Pennsylvania Ave. NW., Washington, DC. The Subcommittees sessions will begin at 1 p.m. and conclude at 5 p.m. on the 3rd floor of the Ariel Rios North Building in conference rooms 3428, 3528 and 3530. The subcommittees will be discussing State best practices for assisting small towns, the Small Town Alliance, nest steps on EPA's Report on the Environment, and the Great Lakes Regional Collaboration.

The Committee will hear comments from the public between 1 p.m.–1:15 p.m. on Thursday, November 3. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis, and the total period for comments may be extended, if the number of requests for appearances require it.

This is an open meeting and all interested persons are invited to attend. LGAC meeting minutes and Subcommittee summary notes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. Seating will be on a first come, first serve basis.

DATES: The Local Government Advisory Committee plenary session will begin at 8:30 a.m., Thursday, November 3, and conclude at 2 p.m. on Friday, November 4.

ADDRESSES: The LGAC meeting will be held at the 1025 F. Street NW., (Woodies Building) in room 3704, Washington, DC 20004.

Additional information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW., (1301A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Contact Pamela Luttner, DFO for the Local Government Advisory Committee (LGAC) at (202) 564–3107.

Information on Services for the Handicapped: For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Designated Federal Officer at (202) 564–3107 as soon as possible.

Dated: October 6, 2005.

Mark Flory,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 05–20822 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7985–5]

Administrative Order on Consent—Denver Radium OU 2

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement Agreement Pursuant to Sections 104, 106(a), 107 and 122 of CERCLA and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement pursuant to sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9604, 9606(a), 9607 and 9622, as amended (''CERCLA''), and under the authority of the Attorney General of the United States to compromise and settle claims of the United States concerning the Denver Radium Superfund site, Operable Unit 2 (''OU 2''). The proposed settlement is embodied in an Administrative Order on Consent (''AOC'') between the United States, on behalf of the United States Environmental Protection Agency (''EPA'') and the Atlas Metal & Iron Corp. and Atlas Umatilla, LLC (''Settling Respondents,'' (collectively the ''Parties'')).

This AOC provides for the performance of operation and maintenance activities by the Settling Respondents, the recording of an environmental covenant by Atlas Umatilla, LLC, and the reimbursement of certain response costs incurred by the United States at or in connection with OU 2. In exchange, the United States will provide covenants to the Settling Respondents under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 or 9607, will provide contribution protection for the Settling Respondents, and will waive any lien(s) it may have on the property located at 1100 Umatilla, Denver, Colorado (''Property'') under sections 107(l) and 107(r) of CERCLA, 42 U.S.C. 9607(l) and 9607(r). EPA has notified the State of Colorado (the ''State'') of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. 9606(a).

The Property was listed on the NPL as part of OU 2, on September 8, 1983. EPA issued a ROD for OU 2 on September 29, 1987. The ROD called for excavation and off-site disposal of the radium-contaminated soils. During implementation of the ROD, EPA determined that some radium-contaminated soils could be left in place pursuant to supplemental standards and also discovered the lead contaminated soils. It was determined that excavation, treatment, and off-Site disposal were the best response actions for the lead contaminated soils. These changes to the ROD were documented in an Explanation of Significant Differences (ESD) dated September 17, 1993.

Operation and maintenance activities still need to be performed at the Property, including implementation of institutional controls, to limit or control disturbances of any contaminated soils left on-Site under supplemental standards, to restrict use of ground water, and to monitor and maintain acceptable radon levels in buildings on the Property.

DATES: Comments should be received by November 17, 2005. The Agency will consider all comments received on the proposed AOC and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Sharon Abendschan, Enforcement Specialist (8ENF–RC), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Denver Radium-OU 2 proposed AOC.

FOR FURTHER INFORMATION CONTACT: Richard Sisk, Legal Enforcement Attorney (ENF–L) Legal Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6638.

It is so agreed.

Dated: October 12, 2005.

Eddie A. Sierra,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 05–20825 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0064, FRL –7985–1]

National Clean Water Act Recognition Awards: Presentation of Awards During the Water Environment Federation's Technical Exposition and Conference (WEFTEC), and Announcement of 2005 National Awards Winners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will recognize municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs at the annual Clean Water Act Recognition Awards ceremony during the Water Environment Federation's Technical Exposition and Conference (WEFTEC) in Washington, DC. An inscribed plaque will be presented to first and second place national winners for projects and programs in operations and maintenance at wastewater treatment facilities, biosolids management, pretreatment and storm water management. This action also announces the 2005 national awards winners.

DATES: Monday, October 31, 2005, 11:30 a.m. to 1 p.m.

ADDRESSES: The awards presentation ceremony will be held at the Washington Convention Center, 801 Mount Vernon Place, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, Telephone: (202) 564–0628. Facsimile Number: (202) 501–2396. E-mail: *campbell.maria@epa.gov.* Also visit the Office of Wastewater Management's Web page at *http://www.epa.gov/owm.*

SUPPLEMENTARY INFORMATION: The Clean Water Act Recognition Awards are authorized by section 501(a) and (e) of the Clean Water Act, and 33 U.S.C. 1361(a) and (e). Applications and nominations for the national award must be recommended by EPA regions. A regulation establishes a framework for the annual recognition awards program at 40 CFR part 105. EPA announced the availability of application and nomination information for this year's awards (70 FR 18396, April 11, 2005). The awards program provides national recognition and encourages public support of programs aimed at protecting the public's health and safety and the nation's water quality. State water

pollution control agencies and EPA regional offices make recommendations to headquarters for the national awards. Programs and projects being recognized are in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Municipalities and industries are recognized for their demonstrated achievements in the following awards categories:

(1) Outstanding operations and maintenance practices at wastewater treatment facilities;

(2) Exemplary biosolids management projects, technology/innovation or development activities, research and public acceptance efforts;

(3) Outstanding municipal implementation and enforcement of local pretreatment programs;

(4) Implementing outstanding, innovative, and cost-effective storm water control. The winners of the EPA's 2005 National Clean Water Act Recognition Awards are listed below by category.

Operations and Maintenance Awards Category

First Place:	Sub-Category:
Durham Advanced Wastewater Treatment Facility Clean Water Services, Tigard, Oregon	Large Advanced Plant (tie).
Metro Wastewater Reclamation District, Denver, Colorado	Large Advanced Plant (tie).
Mount Holly Water Pollution Control Facility, Mount Holly, New Jersey	Medium Advanced Plant (tie).
Northwest Water Reclamation Facility, Kennesaw, Georgia	Medium Advanced Plant (tie).
Brownstown Wastewater Utility, Brownstown, Indiana	Small Advanced Plant.
Lawrence Municipal Wastewater Treatment Facility, Lawrence, Kansas	Large Secondary Plant.
Fountain Sanitation District, Fountain, Colorado	Medium Secondary Plant.
Newington New Hampshire Wastewater Treatment Facility, Newington, New Hampshire	Small Secondary Plant.
North Conway Wastewater Treatment Facility, North Conway, Connecticut	Large Non-discharging Plant.
South Blue River Waste Water Treatment Facility, Breckenridge Sanitation District, Breckenridge, Colorado.	Small Non-discharging Plant.
Second Place:	Sub-Category:
Blue Lake Wastewater Treatment Plant, Metropolitan Council Environmental Services, Shakopee, Minnesota.	Large Advanced Plant.
Wheaton Sanitary District, Wheaton, Illinois	Medium Advanced Plant.
Village of Lima Wastewater Treatment Plant, Lima, New York	Small Advanced Plant.
Town of Canton Water Pollution Control Facility, Canton, Connecticut	Small Secondary Plant.

Biosolids Management Awards Category

First Place:	Sub-Category:
District of Columbia Water and Sewer Authority, Biosolids Management Program, Washington, DC	Large Operating Projects.
Lawrence Municipal Wastewater Treatment Facility,	Small Operating Projects Lawrence, Kansas
Dr. Ken Barbarick and Dr. Jim Ippolito, Colorado State University, Fort Collins, Colorado	Research Activities.
Second Place:	Sub-Category:
West Jackson County Land Application Facility, Pascagoula, Mississippi	Small Operating Projects.
Honorable Mention:	
Butler County Department of Environmental Services, Hamilton, Ohio	Large Operating Projects.
Tri-Cities Regional Wastewater Authority and Veolia Water North America, Dayton, Ohio	Small Operating Projects.

Pretreatment Awards Category

First Place:	Sub-Category:
Central Contra Costa Sanitary District, Martinez, California	Greater than 20 Significant Industrial Users (SIUs).
City of Wilsonville Water Pollution Control Facility, Wilsonville, Oregon	6–20 SIUs.
Second Place:	Sub-Category:
Broward County Water and Wastewater Services Utility Compliance and Monitoring Industrial Pretreatment Program, Pompano Beach, Florida.	Greater than 20 SIUs.
Upper Merion Municipal Utility Authority, King of Prussia, Pennsylvania	6–20 SIUs.

Stormwater Management Awards Category

First Place:	Sub-Category:
Northrop Grumman/Newport News/Continental Maritime of San Diego, Inc., San Diego, California	Industrial.

Dated: October 5, 2005.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 05–20815 Filed 10–17–05; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the November 10, 2005 regular meeting of the Farm Credit Administration Board (Board) has been rescheduled. The regular meeting of the Board will be

held Tuesday, November 8, 2004 starting at 9 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 14, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–20957 Filed 10–14–05; 3:59 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding the National Historic Preservation Act

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed Statement of Policy.

SUMMARY: The FDIC is proposing to revise its Statement of Policy on the National Historic Preservation Act of 1966 (NHPA). The revised Statement of Policy reflects the FDIC's experience and practices in applying the current NHPA Statement of Policy and statutory changes to the NHPA and its implementing regulations. The revised Statement of Policy is relevant to applications for deposit insurance for de novo institutions, applications for the establishment of domestic branches, and applications for the relocation of domestic branches or main offices.

DATES: Comments must be submitted on or before December 19, 2005.

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

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments.
- E-mail: *comments@fdic.gov.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.
- Internet Posting: Comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kevin W. Hodson, Section Chief, Risk Management and Applications Section, Division of Supervision and Consumer Protection (202) 898–6919, or Susan van den Toorn, Counsel, Legal Division (202) 898–8707; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC has determined that its Statement of Policy on the NHPA (SOP) should be revised. See: 1 FDIC Law, Regulations, Related Acts 5175. The proposed SOP, in updating and clarifying the NHPA requirements relevant to applicants and the FDIC, will provide for more efficient processing and timely resolution of matters pertaining to the NHPA. The proposed SOP incorporates the role of Tribal Historic Preservation Officers in the review process to take into account the responsibilities of the FDIC pursuant to a number of statutes relating to Indian Tribes and Native Hawaiian organizations. The proposed Statement of Policy continues to provide for public involvement in the FDIC's NHPA compliance activities through the comment periods provided for relevant applications in 12 CFR part 303.

The NHPA sets forth a national policy to promote the preservation of historic resources. It requires, in part, that all agencies of the Federal Government consider the effects of their undertakings on historic properties. The Advisory Council on Historic Preservation (Advisory Council) has adopted regulations that implement this requirement. 36 CFR part 800. The FDIC considers applications for deposit insurance for de novo institutions, applications to establish a domestic branch, and applications to relocate a domestic branch or main office (collectively, ''Covered Applications'') to be undertakings for the purposes of section 106 of the NHPA. Because the NHPA has been amended and the Advisory Council has revised its regulations during the interim period, the FDIC is taking this opportunity to revise its SOP to conform to those amendments and revisions.

Request for Public Comment as Part of EGRPRA

Consistent with the spirit of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA, 12 U.S.C. 3311), the FDIC requests public comment to identify any areas of the proposed SOP that are outdated, unnecessary, or unduly burdensome.

The Board of Directors of the FDIC hereby proposes the revised Statement of Policy on the National Historic Preservation Act, as set forth below.

National Historic Preservation Act of 1966 Procedures Relating to Filings Made With the FDIC

This Statement of Policy (SOP) addresses the FDIC's compliance with the National Historic Preservation Act of 1966, as amended, *16 U.S.C. 470 et seq.* (NHPA), with respect to certain applications submitted to the FDIC in accordance with governing regulations at *12 CFR part 303.* This SOP is relevant to applications for deposit insurance for de novo institutions, applications for the establishment of domestic branches, and applications for the relocation of domestic branches or main offices (collectively, ''Covered Applications'').

Prior to an Applicant taking an action with respect to a property or site relevant to a Covered Application, the FDIC must consider the potential effects of the proposal on the property or site. Relevant sites include any property of historical, architectural, archeological, or cultural significance, including land and structures; such sites may be either included in the National Register of Historic Places (National Register) or eligible for inclusion. Further, properties relevant to a Covered Application include those properties owned or to be owned by the institution, as well as any property that is or will be leased from a third party. Applicants are cautioned that no action should be taken with respect to a property or site relevant to a Covered Application prior to obtaining consent from or entering into an alternative resolution with the FDIC and, as applicable, the appropriate State or Tribal Historic Preservation Officer (SHPO/THPO) and the Advisory Council. Such actions include:

- Demolition of existing buildings or any change to the physical structure or use of the property, or of physical features within the property's setting;
- Excavation of the land, construction of any new structures, or the introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features;
- Neglect of a property that causes its deterioration; or
- The transfer, lease, or sale of a property, or any portion of the property by the applicant without adequate and legally enforceable restrictions or conditions to ensure long-term

preservation of the property's historic significance.

A. Relevant Laws, Executive Orders and Regulations

The NHPA is the primary historic preservation law affecting Covered Applications and outlines the historic preservation responsibilities of Federal agencies. Among these responsibilities, Federal agencies must consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on such undertakings before they occur. The NHPA and other applicable statutes, regulations, and guidance are as follows:

- *National Historic Preservation Act of 1966, as amended through 2000.*
- *National Environmental Policy Act of 1969 (NEPA).*
- *Archeological and Historic Preservation Act of 1974 (AHPA).*
- *Archeological Resources Protection Act of 1979 (ARPA).*
- *Native American Graves and Repatriation Act of 1990 (NAGPRA).*
- *American Indian Religious Freedom Act of 1978 (AIRFA).*
- *Executive Order 12898: Environmental Justice (1994).*
- *Executive Order 13007: Indian Sacred Sites (1996).*
- *12 CFR part 303.*
- *36 CFR part 68.*
- *36 CFR part 800.*

This SOP supplements the Advisory Council regulations found at *36 C.F.R. part 800.*

B. Covered Applications

In connection with a Covered Application and prior to taking any action that would affect a proposed site, Applicants should assess whether or not their proposal involves an historic property or district and determine whether or not the property is included (or eligible for inclusion) in the National Register. Applicants should request information from their SHPO and, in the case of tribal lands, the THPO to determine whether or not their proposal may affect an historic property or district. If there is a question as to whether a proposal involves an historic property or district, the Applicant should obtain SHPO/THPO clearance before proceeding with the proposal.

SHPO/THPO consent may not be necessary in all circumstances. Examples under which such consent may be unnecessary are those applications for messenger services or in which financial institution offices would be located in supermarkets, existing shopping centers, mobile or seasonal facilities, or properties that have been newly constructed and in which the Applicant had no ownership interest prior to or during construction. If there is a question as to the requirements for prior SHPO/THPO clearance, Applicants should consult with the appropriate FDIC Regional Office.

If the proposal involves a district, site, building, structure or object that is included in or eligible for inclusion in the National Register, the Applicant should provide the FDIC with information relevant to the proposed site. This information will facilitate the FDIC's review of the proposal, and should include:

- Plans for destruction or alteration of all or any part of the property;
- Plans for isolation from or alteration of the surrounding environment;
- Plans for the introduction of visual, audible, or atmospheric elements;
- Details regarding any restrictions or conditions affecting the long-term preservation of the property's historic significance;
- Information received from the SHPO/THPO, as applicable; and
- Such other details as appropriate for the proper evaluation of the proposal.

In order for the Applicant to participate fully in consultations, the FDIC will generally issue a letter to the appropriate SHPO/THPO specifically designating the Applicant as a ''consulting party.'' It is the FDIC's view that all applicants should be so designated in order to facilitate the assessment and consultation process.

C. FDIC Determinations and Resolution of Potential Adverse Effects

If, upon review, the FDIC concurs that no historic properties are present or affected, it will provide documentation to the SHPO/THPO and, barring any objection within 30 days, will proceed with the Covered Application.

If the FDIC, in consultation with the appropriate SHPO/THPO, finds that a proposal involves a district, site, building, structure or object that is included in or eligible for inclusion in the National Register, the FDIC must consider the potential effect of the proposal on the property or district, or any property of historical, architectural, archeological, or cultural significance that is located in the area of the proposed undertaking. After considering relevant information provided by the consulting parties or otherwise available, a determination will be made as to the effect the proposal may have on the historic property or district.

In the event the FDIC determines that the proposal may have an adverse effect, the FDIC will consult with the SHPO/THPO and the Applicant to seek an agreeable resolution. Such a resolution may be executed in the form of a Memorandum of Agreement among the consulting parties. If the Advisory Council has not participated in the consultation, a copy of the proposed or executed Memorandum of Agreement and supporting documentation (as specified in the Advisory Council regulations) will be provided to the Advisory Council.

Consultation may be terminated by the SHPO/THPO or other designated consulting party if determined to be unproductive. In this case, the FDIC, Advisory Council and, as appropriate, the remaining consulting parties, may enter into a Memorandum of Agreement.

D. Information Requests

Public involvement through the comment period for a Covered Application (as provided for in *12 CFR part 303*) is an important part of the consultation process. Inquiries by interested parties regarding specific Covered Applications should be directed to the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection.

Dated at Washington, DC, this 6th day of October 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–20767 Filed 10–17–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved

collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 16, 2005.

ADDRESSES: You may submit comments, identified by Reg H–2 or Reg BB, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H.

Agency form number: Reg H–2.

OMB control number: 7100–0280.

Frequency: Event-generated.

Reporters: State member banks.

Annual reporting hours: 122,413 hours.

Estimated average hours per response: Notice of special flood hazards to borrowers and servicers, 0.08 hours; notice to the Federal Emergency Management Agency (FEMA) of servicer, 0.08 hours; notice to FEMA of change of servicer, 0.08 hours; and retention of standard FEMA form, 0.04 hours.

Number of respondents: 910.

General description of report: This information collection is mandatory (12 U.S.C. 248(a)(1)). Because the Federal Reserve does not collect any of FEMA forms this information collection is not given confidential treatment. However, should any of these records come into the possession of the Federal Reserve, such information may be protected from disclosure by exemption 4 and 6 of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: Regulation H requires state member banks to notify a borrower and servicer when loans secured by real estate are determined to be in a special flood hazard area and notify them whether flood insurance is available; notify FEMA of the identity of, and any change of, the servicer of a loan secured by real estate in a special flood hazard area; and retain a completed copy of the Standard Flood Hazard Determination Form used to determine whether property securing a loan is in a special flood hazard area.

2. Report title: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

Agency form number: Reg BB.

OMB control number: 7100–0197.

Frequency: Annually.

Reporters: State member banks.

Annual reporting hours: 85,234 hours.

Estimated average hours per response: Recordkeeping Requirement, small business and small farm loan register, 219 hours. Optional Recordkeeping Requirements, consumer loan data, 326 hours; other loan data, 25 hours. Reporting Requirements, assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; and HMDA out of MSA loan data, 253 hours. Optional Reporting Requirements, data on lending by a consortium or third party, 17 hours; affiliate lending data, 38 hours; strategic plan, 275 hours; and request for designation as a wholesale or limited purpose bank, 4 hours. Disclosure Requirement, public file, 10 hours.

Number of respondents: 914.

Abstract: This submission covers an extension of the Federal Reserve's currently approved information collections in their CRA regulations (12 CFR part 228). The submission involves no change to the regulation or to the information collection.

The Federal Reserve System needs the information collected to fulfill their obligations under the CRA (12 U.S.C. 2901 *et seq.*) to evaluate and assign ratings to the performance of institutions, in connection with helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The Federal Reserve System uses the information in the examination process and in evaluating applications

for mergers, branches, and certain other corporate activities. Financial institutions maintain and provide the information to the Federal Reserve System.

Board of Governors of the Federal Reserve System, October 13, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–20833 Filed 10–17–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 20, 2005

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 20, 2005.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the Federal funds rate to an average of around 3¾ percent.

The vote encompassed approval of the paragraph below for inclusion in the statement to be released shortly after the meeting:

The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

By order of the Federal Open Market Committee, October 12, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05–20801 Filed 10–17–05; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee Meeting on August 9, 2005, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252]

General Services Administration Acquisition Regulation; Information Collection; Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding preparation, submission, and negotiation of subcontracting plans. A request for public comments was published at 70 FR 24042, May 6, 2005. No comments were received.

This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, submission, and negotiation of subcontracting plans requires for all negotiated solicitations having an anticipated award value over $500,000 ($1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether this collection of information is necessary 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.

DATES: Submit comments on or before: November 17, 2005.

FOR FURTHER INFORMATION CONTACT Rhonda Cundiff, Procurement Analyst, Contract Policy Division, at telephone (202) 501–0044 or via e-mail to *rhonda.cundiff@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSAR provision at 552.219–72 requires a contractor (except small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.

Responses Per Respondent: 1.

Hours Per Response: 12.

Total Burden Hours: 12,240.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

Dated: October 11, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 05–20760 Filed 10–17–05; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974: Revision of a System of Records Notice

AGENCY: General Services Administration

ACTION: Notice of an updated system of records subject to the Privacy Act of 1974

SUMMARY: The General Services Administration (GSA) is providing notice of a revision to the record system, Travel System (GSA/PPFM–3). The system provides control over the expenditure of funds for travel, relocation, and related expenses. The revision includes a new category of records, credit data, as required by the Consolidated Appropriations Act, 2005 (P.L. 108–447) and Office of Management and Budget guidance. The notice also updates authorities, includes minor editing for clarification purposes, and updates routine uses.

EFFECTIVE DATE: The system of records will become effective without further notice on November 17, 2005 unless comments received on or before that date result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: The GSA Privacy Act Officer. Telephone: (202) 501–1452. Address: Office of the Chief People Officer (C), General Services Administration, 1800 F Street NW, Washington DC 20405.

Dated: October 7, 2005

June V. Huber,

Director, Office of Information Management.

GSA/PPFM–3

SYSTEM NAME:

Travel System, GSA/PPFM–3.

SYSTEM LOCATION:

The system of records is located in the General Services Administration (GSA) Central Office service and staff offices and administrative offices throughout GSA.

PERSONS COVERED BY THE SYSTEM:

Current and former employees of GSA and of commission, committees, and small agencies serviced by GSA, including persons other than full-time employees authorized to travel on Government business.

TYPE OF RECORD SYSTEM:

The system provides control over the expenditure of funds for travel, relocation, and related expenses. Therefore, provisions are made to authorize travel and relocation, provide and account for advances, and to pay for travel and relocation costs. The system contains records that may include, but are not limited to, name, Social Security Number, date of birth, residence address, dependent's names and ages, duty stations, itinerary and credit data in the form of credit scores (examples of credit scores are FICO, an acronym for Fair Isaac Corporation, a Beacon score, etc.) or commercial and agency investigative reports showing debtors' assets, liabilities, income, expenses, bankruptcy petitions, history of wage garnishments, repossessed property, tax liens, legal judgments on debts owed, and financial delinquencies.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. 5701–5709, 5 U.S.C. 5721–5739, and Section 639 of the Consolidated Appropriations Act, 2005 (P.L. 108–447).

PURPOSE:

To assemble in one system information supporting the day-to-day operating needs associated with managing the GSA travel and relocation programs. The system includes an automated information system and supporting documents.

ROUTINE USES OF THE RECORD SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSES IN USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to conduct official duties associated with the management and operation of the travel and relocation program. Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the Office of Management and Budget in connection with reviewing private relief legislation at any stage of the coordination and clearance process.

i. To banking institutions so that travelers may receive travel reimbursements by electronic funds transfer (EFT).

j. To the Department of the Treasury regarding overseas travel allowances that are excluded from taxable income, so that reports can be compiled and submitted to the Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Paper records are stored in file folders, card files and cabinets; magnetic tapes and cards are stored in cabinets and storage libraries; and computer records are stored within computers and attached equipment.

RETRIEVAL:

Paper records are filed by name. Electronic records are retrievable by name, vendor number (an identifier assigned by GSA to all payees, including companies and individuals), or Social Security Number.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A–130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

DISPOSAL:

The agency disposes of the records as described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2A and CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Initiative Division (BCD), Office of Finance, Office of the Chief Financial Officer, General Services Administration, 1800 F Street NW, Washington DC, 20405.

NOTIFICATION PROCEDURE:

Employees may obtain information about whether they are a part of this

system of records from the system manager at the above address.

RECORD REVIEW PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

PROCEDURE TO CONTEST A RECORD:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published at 41 CFR Part 105–64.

RECORD SOURCES:

The sources are individuals, other employees, supervisors, other agencies, management officials, and non-Federal sources such as private firms.

[FR Doc. 05–20759 Filed 10–17–05; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging Policy Committee

AGENCY: Administration on Aging, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the eighth Policy Committee meeting concerning planning for the 2005 White House Conference on Aging. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting. This notice is being published less than 15 days prior to the meeting due to scheduling problems.

DATES: The meeting will be held Tuesday, October 25, 2005, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the Atrium Ballroom at The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001–1527.

FOR FURTHER INFORMATION CONTACT: Kim Butcher at (301) 443–2887, or e-mail at *http://www.Kim.Butcher@whcoa.gov*. Registration is not required. Seating is on a first come, first-served basis.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will meet to finalize discussions and planning, including a vote on the Annotated Agenda, for the 2005 WHCoA that will be held from December 11 through 14, 2005 at the Marriott Wardman Park Hotel in Washington, DC.

Dated: October 13, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–20834 Filed 10–17–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 58431–32, dated October 6, 2005) is amended to reflect the reorganization of the National Immunization Program.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Office of the Director (CJ1), National Immunization Program Office (CJ)* by inserting after item (12) the following: (13) creates and executes information science and technology strategic plans to provide the Program with related services (e.g., hardware/software consultation, database development and management, etc.) and ensures compliance with CDC IT infrastructure and requirements.

Delete in their entirety the following titles and functional statements of the *National Immunization Program Office (CJ)*:

Data Management Division (CJ2)
Systems Operation and Design Activity (CJ2–2)
Immunization Registry Support Branch (CJ22)
Assessment Branch (CJ23)
Statistical Analysis Branch (CJ24)

Following the title and functional statement for the *Health Services Research and Evaluation Branch (CJ46), Immunization Services Division (CJ4),* insert the following:

Immunization Registry Support Branch (CJ47). (1) Provides quality assurance for each program study, survey, and surveillance system evaluation of immunization registries at the state and local level to build an infrastructure to raise and sustain immunization coverage in children; (2) facilitates information flow among Program, divisions, grantees, professional organizations, and private contractors regarding immunization registry systems development through regular conference calls, clearinghouse function, up-to-date Web sites, and an annual national conference; (3) establishes complex health and technical functional specifications and standards for immunization registry systems developed by state and local health department personnel and commercial software developers to be used throughout public and private health delivery systems; (4) acts as a catalyst to build the political and professional will and legal environment to facilitate the development and implementation of immunization registries; (5) fosters evidence-based enhancements of immunization registries through on-site standardized evaluations and promoting research that identifies factors associated with system success and failure; (6) promotes the secure, automated exchange of immunization records between immunization registries by fostering consensus on, and implementation of, the required protocols and standards; (7) advocates for immunization registries in the development and maintenance of public health data models and participates in the development of such data models; and (8) formulates long-range plans and proposals for future systems modification, and facilitates the use of standards and expert guidance to assure national and international health information systems are responsive to agency and constituent needs.

Assessment Branch (CJ48). (1) Performs coding and editing, and arranges for data input either in-house or through an outside vendor; (2) collaborates with the National Center for Health Statistics, and other Centers as necessary, in the conduct of household probability surveys, random digit dialing surveys, and other types of surveys to measure immunization coverage; (3) collects, tabulates and analyzes immunization assessment data, including sample survey data, census counts at school entrance, monthly and/or quarterly vaccine administration reports, and the biologic reports from manufacturers; (4) designs sample surveys for epidemiologic investigations fro childhood and adult vaccine-preventable diseases; (5) develops and maintains liaison with external groups

regarding assessments; (6) directs the assessment of immunization levels for the national population and specific population sub-segments; (7) determines the most appropriate implementation procedure for data management activities operations for the NIS and NHIS Immunization coverage data; (8) provides documented data sets upon completion of studies and surveys; (9) establishes, implements, monitors, and maintains the standards and procedures for immunization-related data collection for data analysis for NIS data; and (10) establishes and evaluates data quality control measures to assure that all Program studies, surveys, and surveillance systems adhere to the established standards and procedures from data collection to the point of data analysis.

Dated: April 28, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

Editorial Note: This document was received at the Office of the Federal Register October 13, 2005.

[FR Doc. 05–20792 Filed 10–17–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 58431–58432, dated October 6, 2005) is amended to reorganize the National Personal Protective Technology Laboratory, National Institute for Occupational Safety and Health.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title for the *National Personal Protective Technology Laboratory (CCL)* delete the functional statement and insert the following:

The mission of the National Personal Protective Technology Laboratory (NPPTL) is to prevent work-related injury and illness by ensuring the development, certification, deployment, and use of personal protective equipment and fully integrated, intelligent ensembles. To accomplish its mission, NPPTL: (1) Conducts a variety of laboratory and field research relating to the development and evaluation of innovative personal protective technologies and equipment; (2) researches and develops criteria, standards and guidelines relating to personal protective technology (PPT) performance, quality, reliability and efficacy; (3) directs and carries out the NIOSH respirator approval program and related laboratory, field, quality, and records activities; (4) produces and disseminates research findings, technical information, training materials, performance criteria, and recommendations for using personal protective equipment to improve protection of workers; (5) conducts surveillance of hazards at worksites for which protective technologies and equipment are used to protect workers, and studies patterns of personal protective technology (PPT) use; and (6) develops studies and assesses the effectiveness of communications and training approaches and technologies relating to PPT.

Technology Evaluation Branch (CCLE). (1) Administers Department of health and Human Services 42 CFR part 84 respirator approval program including processing respirator approval applications; i.e., certifying performance, quality, reliability, and efficacy of respiratory protection devices in accordance with Federal regulations and NIOSH policy; (2) evaluates and maintains official records on NIOSH-approved respirators; (3) evaluates quality control plans, including in-plant manufacturing-site quality system audits, and monitors the quality and performance of certified respirators; (4) evaluates personal protective technologies and equipment; (5) investigates field problems associated with NIOSH-certified respirators and other PPE; (6) recommends NIOSH activities to address product non-conformance such as NIOSH approval rescission, product recalls or retrofits, and public notification of potentially unsafe PPE products; (7) provides technical assistance on the selection, use, maintenance, and operation of respiratory protective equipment and other PPE; (8) conducts PPT failure investigations and analyses, and recommends criteria to improve PPT, and (9) recommends user guidelines, including cautions, limitations, and restrictions of use.

Technology Research Branch (CCLG). (1) Encourages and conducts research related to innovative technologies for new products; (2) conducts laboratory and field research of methods and PPT performance, quality, reliability, and efficacy, especially for new or emerging hazards and recommends criteria to improve PPT; (3) investigates emerging hazards and personal exposures to identify worker PPT needs and technology gaps; (4) conducts research for the effective integration of various personal protective technologies and equipment; (5) recommends performance, quality, reliability, and efficacy criteria; (6) conducts hypothesis testing-based research; (7) studies and improves human/technology interfaces; and (8) conducts research into the physiologic and psychologic stressors and worker responses to protective technologies and equipment.

Policy and Standards Development Branch (CCLH). (1) Develops and promulgates new approval PPE-related standards and regulations; (2) identifies where research is needed to support new standards, regulations, and policies relating to NIOSH-certified respirators and other PPE; (3) recommends NIOSH policy relating to the approval of respirators, including approval policies for innovative respirator features; (4) assesses research findings and translates them into effective recommendations for NIOSH policy, regulations, and auditing practices, especially for new PPE technologies or special applications of these technologies; (5) holds public meetings to solicit information concerning users needs and the feasibility of specific technologies; (6) participates in national and international PPE standard setting committees and establishes a national/international database of relevant standards, and (7) determines the public financial and legal impacts of Federal regulation revision.

Delete in their entirety the following titles and functional statements for the NPPTL: *Respirator Branch (CCC2), Technology Research Branch (CCC3), Surveillance Communications and Training Branch (CCC4).*

Dated: June 3, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–20790 Filed 10–17–05; 8:45am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR titled, ''Medicare Managed Care System (MMCS), No. 09–70–4001.'' MMCS processes beneficiary enrollment and creates beneficiary level payments for the Managed Care Organizations (MCO). We propose to broaden the scope of this system by adding the Medicare Part D Program under Title XVIII. The Medicare+Choices Program has been changed to the Medicare Advantage (MA) Program. The MA was mandated by the Balance Budget Act (BBA) of 1997 (Public Law (Pub. L.) 105–33). To more accurately reflect the changes proposed for this system, we will modify the name to read: ''Medicare Advantage Prescription Drug (MARx) System.'' The enhanced system will continue to perform all current MMCS processing requirements. In addition, MARx will be a stand alone system that will include the processing of all enrollment/disenrollment transactions associated with the Part D Program. MARx will include the following: Health Maintenance Organizations (HMO), Health Care Prepayment Plan (HCPP), Medicare Advantage Organizations (MAO), Medicare Advantage Prescription Drug (MAPD) Plans and Prescription Drug Plans (PDP).

On December 8, 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). MMA amends the Social Security Act (the Act) by adding the Medicare Part D Program under Title XVIII and mandate that CMS establish a voluntary Medicare prescription drug benefit program effective January 1, 2006. Under the new Medicare Part D benefit, the Act allows Medicare payment to MA plans that contract with CMS to provide qualified Part D prescription drug coverage as described in 42 Code of Federal Regulations (CFR) 417 and 422.

We are modifying the language in some of the routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will remain prioritized according to their proposed usage. Information previously retrieved from the Enrollment Database (System No. 09–70–0502) will now be retrieved by the Medicare Beneficiary Database (MBD) (System No. 09–70–0536). We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to maintain a master file of MA and MAPD plan members for accounting and payment control; expedite the exchange of data with MA and MAPD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor or consultant contracted by the Agency; (2) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist provider and suppliers of service directly or dealing through contractors, fiscal intermediaries (FI) or carriers for the administration of Title XVIII; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) assist insurance companies, third party administrators, employers, self-insurers, managed care organizations, and other supplemental insurers; (6) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (7) support constituent requests made to a congressional representative; (8) support litigation involving the Agency, and (9) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified 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 DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system 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 14, 2005. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development (DPCDD), CMS, Room 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: Mary Sincavage, Division Director, Division of Medicare Advantage Appeals and Payment Systems, Information Services Modernization Group, Office of Information Services, CMS, Room N3–16–24, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–1163.

SUPPLEMENTARY INFORMATION: The Medicare Managed Care System (MMCS) is the redesign of the legacy system Group Health Plan (GHP) system. MMCS processes beneficiary enrollment and creates beneficiary level payments for the Managed Care Organizations (MCO). The beneficiary level payments are aggregated to the MCO level and sent to the Automated Plan Payment System (APPS) for additional organization level adjustments before payments are sent to the MCOs. An independent technical evaluation of CMS' managed care system found that without major enhancements, MA provisions could not be supported by existing Medicare systems. Also, the comprehensive review of existing systems was necessary in order to proceed with a development effort that would ensure those future customer service and program management objectives were met.

The CMS has long realized that the Medicare program is in the middle of rapidly changing health insurance industry characterized by an expansion of service delivery models and payment options. The MA provisions of the BBA of 1997 (Pub. L. 105–33) has made the challenge of managing beneficiary

health choices one of the most critical challenges facing CMS and the health industry at large. To be of maximum use, the data must be organized and categorized into a comprehensive system. CMS sought to identify key sources, including both organizations and systems that could provide valid and reliable information. Medicare will no longer exist within an environment characterized by limited health insurance options and standard delivery models.

MARx will recalculate payments due to Part D risk adjustment factor reconciliation. MARx will receive low income subsidy status information from the MBD, including notification of any changes. MARx will calculate adjustments due to any retroactive changes to low income subsidy status. MARx is not responsible for sending Social Security Administration (SSA) the Part D plan data. It is assumed that this will come from the Health Plan Management System (HPMS) (System No. 09–70–4004). Fallback plans will not be paid by MARx. MARx enrollments may be rejected if a beneficiary is currently enrolled in a plan that is part of the retiree drug subsidy (RDS). MARx will notify the RDS of any rejected enrollments due to this situation. Plans will be notified on a weekly basis, if MARx has adjusted the premium or if SSA/Railroad Retirement Board/Office of Personnel Management cannot deduct the premium. Additionally, MARx is a stand alone system that will be processing all enrollment/disenrollment transactions associated with the Part D program.

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis for the System. Authority for maintenance of the system is given under Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860, 1866, and 1876 of Title XVIII of the Act (42 CFR 417 and 422).

B. Collection and Maintenance of Data in the System. The system will include information on recipients of Medicare hospital insurance (Part A) and Medicare medical insurance (Part B) and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the MA Program. The system will also include information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system will contact identifying information such as beneficiary name, health insurance claim number, social security number, and other demographic information.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. 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 MARx information that can be associated with an individual as provided for under ''Section III. Modified 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 MARx. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR 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 data is being collected; *e.g.,* to maintain a master file of MA and MAPD plan members for accounting and payment control; expedite the exchange of data with MA and MAPD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans.

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. 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

b. 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. Modified Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use. These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MARx without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

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 a 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, agency of a state government, an agency established by state law, or its fiscal agent 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 MARx information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MARx information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system to providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

3. To providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require MARx information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require MARx information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.,* health maintenance organizations or a competitive medical plan with a Medicare contract, or a Medicare-approved health care prepayment plan), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require MARx information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

MARx data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

7. To a Member of Congress or 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 often request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information tin response to the inquiry.

8. 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, or occasionally when another party is involved in litigation and CMS's 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.

9. To a CMS contractor (including, but not limited to FIs 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 programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract 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 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.

10. 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 MARx information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures. This system contains Protected Health Information 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. The protected health information is collected from the Plan during the enrollment process and passed onto the Medicare Beneficiary Database. These elements include the Beneficiary Name, Sex, Date of Birth, and Health Insurance Claim Number. Disclosures of Protected Health Information 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 of data 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; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System 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. We will only disclose the minimum personal data necessary to achieve the purpose of MARx. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. 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 the disclosure of information relating to individuals.

Dated: October 12, 2005.

Lori Davis,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–4001.

SYSTEM NAME:

''Medicare Advantage Prescription Drug (MARx)'' System HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include information on recipients of Medicare hospital insurance (Part A) and Medicare medical insurance (Part B) and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the Medicare Advantage (MA) Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will also include information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system will contain identifying information such as beneficiary name, health insurance claim number, social security number, and other demographic information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under Section 101 of the

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860, 1866, and 1876 of Title XVIII of the Act (42 CFR 417 and 422).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to maintain a master file of MA and MAPD plan members for accounting and payment control; expedite the exchange of data with MA and MAPD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor or consultant contracted by the Agency; (2) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist provider and suppliers of service directly or dealing through contractors, fiscal intermediaries (FI) or carriers for the administration of Title XVIII; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) assist insurance companies, third party administrators, employers, self-insurers, managed care organizations, and other supplemental insurers; (6) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (7) support constituent requests made to a congressional representative; (8) support litigation involving the Agency, and (9) 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. Entities Who May Receive Disclosures Under Routine Use. These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MARx without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent 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 providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations or a competitive medical plan with a Medicare contract, or a Medicare-approved health care prepayment plan), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

7. To a Member of Congress or 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.

8. 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.

9. To a CMS contractor (including, but not limited to FIs 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 programs.

10. 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 Circumstances Affecting Routine Use Disclosures. This system contains Protected Health Information as defined by the Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of Protected Health Information 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 of data 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:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by name and health insurance claim number of the beneficiary.

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. Office of Management and Budget 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; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 6 years and 3 months. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Medicare Advantage Appeals and Payment Systems, Information Services Modernization Group, Office of Information Services, CMS, Room N3–16–24, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined 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 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record 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:

Data for this system is collected from MAs and MAPDs (which obtained the data from the individuals concerned), Social Security Administration, and the Medicare Beneficiary Database system of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–20909 Filed 10–17–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Notice of Secretary's Advisory Committee Meeting

AGENCY: OPRE, ACF, HHS.

ACTION: Notice of Meeting—Advisory Committee on Head Start Accountability and Educational Performance Measures.

SUMMARY: The Secretary of Health and Human Services, by authority of 42 U.S.C. 9836A, Section 641A(b) of the Head Start Act, as amended (5 U.S.C. Appendix 2), has formed the Advisory Committee on Head Start Accountability and Educational Performance Measures (the Committee). The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2).

The function of the Committee is to help assess the progress of HHS in developing and implementing

educational measures in the Head Start Program. This includes the Head Start National Reporting System (NRS). The Committee is to provide recommendations for integrating NRS with other ongoing assessments of the effectiveness of the program. The Committee will make recommendations as to how NRS and other assessment data can be included in the broader Head Start measurement efforts found in the Family and Child Experiences Survey (FACES), the national Head Start Impact Study, Head Start's Performance Based Outcome System and the ongoing evaluation of the Early Head Start program.

Date: November 1, 2005, 8:30 a.m.–5:30 p.m. (Dinner Recess). November 2, 2005, 8:30 a.m.–4:30 p.m.

Place: The Beacon Hotel, 1615 Rhode Island Ave, NW., Washington, DC 20036.

Agenda: The Committee will hear presentations related to existing Head Start evaluations and NRS implementation and will continue the discussions begun at the first meeting in June 2005.

SUPPLEMENTARY INFORMATION: This, the second meeting of the Committee, is open to the public. Persons wishing to bring written statements or papers focused on relevant, existing research with Head Start populations or on measures appropriate for low-income four- and five-year-old children are welcome to do so. Individuals may e-mail such documents to *Secretaryadvisory-hs@esi-dc.com* or mail to: ESI, ATTN: Xzavier Wright, Head Start Bureau—Secretary's Advisory Committee, 7735 Old Georgetown Road, Suite 600, Bethesda, Maryland 20814.

Documents received shall be presented to the Committee.

The Committee meeting records shall be kept at the Aerospace Center located at 901 D Street, SW., Washington, DC 20447. The Head Start Bureau will also make material related to this meeting available on the Head Start Web site *http://www2.acf.dhhs.gov/programs/hsb/*.

An interpreter for the deaf and hard of hearing will be available upon advance request by contacting *xzavier@esi-dc.com*.

Naomi Goldstein,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 05–20758 Filed 10–17–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0410]

Prescription Drug User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Prescription Drug User Fee Act (PDUFA). The legislative authority for PDUFA expires in September 2007. Without further legislation, we will no longer be able to collect user fees for the prescription drug program and resources critical to running the program would become unavailable to us. We invite public comment on the PDUFA program and suggestions regarding what features we should propose for the next PDUFA program.

DATES: The public meeting will be held on November 14, 2005, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by October 31, 2005. You may register electronically at *CBERTraningSuggestions@cber.fda.gov*. Walk-in registration at the meeting site will also be accepted. Submit written comments by December 14, 2005.

ADDRESSES: The meeting will be held at the Natcher Conference Center, National Institutes of Health, Bldg. 45, Center Dr., 9000 Rockville Pike, Bethesda, MD 20815. Parking is limited, and there may be delays entering the NIH campus due to increased security. All visitors' vehicles will be inspected, and visitors must show one form of identification (ID) (such as a government-issued photo ID, driver's license, passport, etc.) We recommend arriving by subway (Metrorail) if possible. NIH is accessible from the Metrorail's ''Red Line'' at the Medical Center/NIH station.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

For information regarding this notice: Patricia A. Stewart, Office of Policy and Planning (HFP–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2647, FAX: 301–594–6777, e-mail: *Patricia.Stewart@oc.fda.gov*.

For information regarding registration: Melanie Whelan or Kathy Eberhart, Office of Communication, Training and Manufacturers Assistance (HFM–49), Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–2000, FAX: 301–827–3079.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to hold a public meeting on PDUFA. The authority for PDUFA expires in September 2007. Without further legislation, FDA would no longer be able to collect user fees for the prescription drug program. Resources critical to running the program would become unavailable to FDA. We are now considering what features we should propose for the next PDUFA program. We are convening a public meeting to hear stakeholder views on this subject. We are offering the following two general questions for consideration, and we are interested in responses to these questions and any other pertinent information stakeholders would like to share:

1. What is your assessment of the overall performance of the PDUFA program thus far?

2. What aspects of PDUFA should be retained, or what should be changed to further strengthen and improve the program?

We provide the following background on the PDUFA program so potential participants can better understand the history and evolution of the PDFUA program and its current status.

II. What is PDUFA? What Does It Do?

PDUFA, in broad terms, is a series of laws that have authorized us to collect fees from companies that produce certain human drug and biological products. The original PDUFA (PDUFA I) was enacted in 1992 (as the Prescription Drug User Fee Act, Public Law 102–571) and had a 5-year life. In 1997, as PDUFA I expired, Congress passed the FDA Modernization Act (FDAMA, Public Law 105–115). FDAMA included, among other things, an extension of PDUFA (PDUFA II) for an additional 5 years. In 2002, Congress extended PDUFA again for 5 years (PDUFA III) through the Public Health Security and Bioterrorism Preparedness and Response Act (Public Law 107–188).

PDUFA's original intent was to provide additional revenues to us so that we could hire more staff to improve the process for the review of human

drugs to make important drug therapies available to patients sooner without compromising review quality.

Under PDUFA, the industry provided additional funds through user fees that would be available to FDA, in addition to appropriated funds, to spend on the process for the review of human drugs. Our authority to collect user fees is ''triggered'' only when a base amount of appropriated funds, adjusted for inflation, is spent.

In conjunction with PDUFA, we set review performance goals that became more stringent each year. These goals applied to the review of original new human drug and biological product applications, resubmissions of original applications, and supplements to approved applications. During the first few years of PDUFA I, we eliminated backlogs of original applications and supplements that had formed in earlier years when the program had fewer resources. Phased in over the 5 years of PDUFA I, the goals were to review and act on 90 percent of priority new drug applications (NDAs), biologics license applications (BLAs), and efficacy supplements (i.e., submissions for products providing significant therapeutic gains) within 6 months of submission of a complete application; to review and act on 90 percent of nonpriority original NDAs, BLAs, and efficacy supplements within 12 months, and on resubmissions and manufacturing supplements within 6 months. Over the course of PDUFA I, we exceeded all of these performance goals.

Under PDUFA II, some review performance goals continued to shorten. For example, by 2002, the PDUFA II goals called on us to review and act on 90 percent of the following:

- Standard new drug and biological product applications and efficacy supplements within 10 months;
- Chemistry and Manufacturing Control supplements requiring prior FDA approval within 4 months; and
- Class 1 resubmissions (that respond to relatively minor deficiencies such as labeling changes) within 2 months.

In addition, PDUFA II added a new set of procedural goals intended to improve our interactions with industry sponsors during the early years of drug development. For example, these goals called for us to meet with sponsors and provide followup meeting minutes within a certain number of days, and provide responses to questions on industry submitted special study protocols within a certain number of days.

We met or exceeded nearly all of our goals for application review and for these other procedures under PDUFA II.

Under PDUFA III, additional money from user fees was authorized, and a mechanism placed in the act to annually account for increases in workload associated with the process for the review of human drugs. For the first time, PDUFA III also authorized us to spend user fee funds on certain aspects of postmarket risk management. The review performance and procedural goals associated with PDUFA III were similar to those under PDUFA II for fiscal year (FY) 2002 performance levels, but the PDUFA III program addressed drug safety issues and established several new initiatives to improve application submissions and agency-sponsor interactions during drug development and application review.

The goals under PDUFA III also included new provisions, for example, to develop guidance for industry on good risk assessment, risk management, and pharmacovigilance practices, to fund outside expert consultants to help evaluate and improve review management processes, and to centralize accountability and funding for all PDUFA information technology initiatives and activities.

Furthermore, in conjunction with PDUFA's reauthorization in 2002, we committed to the creation of a guidance for our review staff and industry on good review management principles and practices as they apply to the first cycle review of NDAs, BLAs, and efficacy supplements, and we announced the guidance's availability in the **Federal Register** of March 31, 2005 (70 FR 16507). We also set a goal of testing whether providing early review of selected applications and additional feedback and advice to sponsors during drug development for selected products can shorten drug development and review times. There were two continuous marketing application (CMA) pilot programs; CMA Pilot 1 provides for the review of a limited number of presubmitted portions of NDAs and BLAs. Under CMA Pilot 2, FDA and applicants can enter into agreements to engage in frequent scientific feedback and interactions during the investigational new drug phase of product development. The first-cycle and CMA initiatives are currently being evaluated to determine their impact on the effectiveness and efficiency of FDA-sponsor communications, product development, and regulatory review.

We have published a number of reports that may help inform the public about PDUFA and its implementation. Key **Federal Register** documents, such as, PDUFA-related guidances, legislation, performance reports, and financial reports, can be found at *http://www.fda.gov/oc/pdufa/* and *www.fda.gov/cder/pdufa*. We may make additional information about PDUFA available on our Web site at *http://www.fda.gov/oc/pdufa*. Additional information about the activities of the involved FDA product centers can be found in the Center for Drug Evaluation and Research 2004 Report to the Nation (*http://www.fda.gov/cder/reports/rtn/2004/rtn2004.htm*), and the Center for Biologics Evaluation and Research FY 2004 Annual Report (*http://www.fda.gov/cber/inside/annrpt.htm*).

III. What Information Should You Know About the Meeting?

A. When and Where Will the Meeting Occur? What Format Will We Use?

Through this notice, we are announcing that we will convene a public meeting to hear stakeholder views on what features we should advance in proposing the PDUFA IV program.

We will conduct the meeting on November 14, 2005, at the Natcher Conference Center, National Institutes of Health (NIH) (see **ADDRESSES**). In general, the meeting format will include presentations by FDA and a series of panels representing different stakeholder interest groups (such as patient advocates, consumer protection, industry, health professionals, and academic researchers). We will also provide an opportunity for individuals to make presentations at the meeting, and for organizations and individuals to submit written comments to the docket after the meeting

B. What Questions Would We Like the Public to Consider?

Please consider the following questions for this meeting:

1. What is your assessment of the overall performance of the PDUFA program thus far?
2. What aspects of PDUFA should be retained, or what should be changed to further strengthen and improve the program?

C. How Do You Register for the Meeting or Submit Comments?

If you wish to attend and/or make a presentation at the meeting, please send an e-mail message to: *CBERTrainingSuggestions@cber.fda.gov* by October 31, 2005. Your e-mail should include the following information: Name, company, company address, company phone number, and e-mail address. You will receive a confirmation within 2 business days.

We also will accept walk-in registration at the meeting site, but

space is limited, and we will close registration when maximum seating capacity (approximately 500) is reached.

We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak.

If you require special accommodations due to a disability, please contact Patricia A. Stewart at least 7 days in advance.

If you would like to submit comments regarding PDUFA IV, please send your comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

D. Will Meeting Transcripts Be Available?

We will prepare a meeting transcript, and we will make the transcript available on our Web site (*http://www.fda.gov*) after the meeting. We anticipate that transcripts will be available approximately 30 working days after the meeting. The transcript will also be available for public examination at the Division of Dockets Management (see **ADDRESSES**), between 9 a.m. and 4 p.m. Monday through Friday.

Dated: October 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20875 Filed 10–14–05; 8:57 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review, Comment Request; 5 A Day Customized Survey

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. The proposed information collection below was previously published in the **Federal Register** on May 18, 2005, page 28544–28545 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: *Title:* 5 A Day Customized Survey. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of the 5 A Day Customized Survey is to further the development of standardized measures of consumer knowledge, attitudes, and behaviors regarding the consumption of fruits and vegetables. Specifically, the Customized Survey will allow for validation of the new ''cup'' portion sizes (consistent with the 2005 Dietary Guidelines) and identify the most efficacious short screener methods of fruit and vegetable intake. In addition, the Customized Survey will measure established predictors of fruit and vegetable consumption at the national level and explore new predictors and constructs not previously examined for fruit and vegetable consumption. The sample will be drawn from a consumer opinion panel methodology using balancing techniques to mirror the U.S. general population on a set of key demographic variables. A separate sample of African Americans will be drawn from the panel.

Prior to fielding the Customized Survey, two pilot studies will be completed as the first phase of this research. Pilot respondents will be drawn from the same consumer panel and have similar demographics as respondents in the main study. A brief description of the two pilot studies follows. In pilot study 1, respondents will initially complete a brief screener questionnaire, three 24-hour dietary recalls over the phone, followed by the Customized Survey by mail. To account for diversity in eating habits, dietary recalls will be obtained for 2 weekdays and 1 weekend per respondent. The recalls will be conducted via phone by trained interviewers using the University of Minnesota's Nutrition Data System (NDS). After completing the dietary recalls pilot respondents will be mailed the Customized Survey within 2 weeks. Fruit and vegetable consumption as assessed by the average of the three 24-hour recalls will be compared with the fruit and vegetable consumption measures from the Customized Survey. In pilot study 2, respondents will complete the Customized Survey by mail at two points in time, six to eight weeks apart. The analysis in pilot study 2 will focus on a rigorous evaluation of the psychometric properties of the Customized Survey instrument to ensure that item-level and instrument-level reliability and validity has been achieved before proceeding to the main data collection phase of the study. Based on the findings of the pilot studies, minor modifications may be made to the Customized Survey prior to the implementation of the main study. *Frequency of response:* Main study, one time response (5 A Day Customized Survey). Pilot study 1, five times (screener, three 24-hour dietary recalls, 5 A Day Customized Survey). Pilot study 2, two times (5 A Day Customized Survey at two points in time). *Affected Public:* Individuals. *Type of Respondents:* U.S. adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 5,875; *Estimated Number of Responses per Respondent:* 1, 2 or 5; *Average Burden Hours per Response:* .416; and *Estimated Total Annual Burden Hours Requested:* 2,467.90. The annualized cost to respondents is estimated at: $46,384.28. The annual reporting burden is summarized in exhibit 1 below. There are no Operating or Maintenance Costs to report.

EXHIBIT 1

Type of respondents *	Number of respondents	Frequency of response	Average burden hours	Annual hour burden
Pilot Study 1:				
Screener	480	1	.08	38.4
Dietary Recall 1	380	1	.50	190
Dietary Recall 2	325	1	.50	162.5

EXHIBIT 1—Continued

Type of respondents *	Number of respondents	Frequency of response	Average burden hours	Annual hour burden
Dietary Recall 3	290	1	.50	145
Mail Survey	200	1	.42	84
Pilot Study 2:				
Mail Survey	200	2	.42	168
Main Implementation				
5 A Day Customized Survey	4,000	1	.42	1,680
Total	5,875			2,467.90

**All respondents are consumer panel members.*

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Amy Lazarus Yaroch, Ph.D., Project Officer, National Cancer Institute, NIH, EPN 4074, 6130 Executive Boulevard MSC 7335, Bethesda, Maryland 20892–7335, or call non-toll-free number 301–402–8425, or FAX your request to 301–480–2087, or E-mail your request, including your address, to *yarocha@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of this notice.

Dated: October 5, 2005.

Rachelle Ragland-Greene,

NCI OMB Clearance Liaison, National Institutes of Health.

[FR Doc. 05–20756 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of the Director; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a special meeting of the National Science Advisory Board for Biosecurity (NSABB) that was held by teleconference on September 29, 2005. The Secretary determined that advance notice was not possible, and that the meeting had to be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended.

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established NSABB to provide advice, guidance and leadership regarding Federal oversight of dual-use research, defined as biological research with legitimate scientific purposes that could be misused to pose a biological threat to public health and/or national security.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: September 29, 2005.

Closed: 10 a.m. to 12 p.m.

Agenda: To review confidential information.

Place: 6705 Rockledge Drive, Bethesda, Maryland, (Telephone Conference Call).

Contact Person: Allison Chamberlain, NSABB Program Assistant, 6705 Rockledge Drive, Bethesda, Maryland 20892, (301) 496–9838.

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20748 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the President's Cancer Panel, October 24, 2005, 8 a.m. to October 24, 2005, 5 p.m., Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC, 20004 which was published in the **Federal Register** on September 27, 2005, 70 FR 56477.

This meeting is amended to change the end time of the open session from 5 p.m. to 4 p.m. on October 24, 2005 and the date and time of the closed session from 1 p.m.–4 p.m. on October 25, 2005 to 4:15 p.m.–6:15 p.m. on October 24, 2005. The meeting is partially Closed to the public.

Dated: October 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20742 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closing Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFA: CA06–002 and CA06–005 Innovative Technologies for Molecular Analysis of Cancer.

Date: November 9–10, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd. Room 8053, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20743 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: October 25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: Assessing Progress, Advancing Change: Challenges in Translating Research.

Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 20004.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Acting Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 212, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement of the Contact Person listed on this notice. This statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deafino.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20744 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Sample Preparation/Cancer Detection.

Date: November 2, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review And Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9584, *volbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20749 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, ''In Vivo Cellular and Molecular Imaging Centers (ICMICS)''.

Date: November 3, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott—University of Maryland, The Inn and Conference Center, 3501 University Boulevard East, Adelphi, MD 20783.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20750 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 14, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20752 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: November 6–8, 2005.

Time: 6:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockvlle Pike, Rockville, MD 20852.

Contact Person: Deborah R. Jaffe, PhD., Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Rm 8135, Bethesda, MD 20892, (301) 496–7721, *jaffed@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20753 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Colorectal Cancer Screening in Primary Care Practice.

Date: October 26–27, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20754 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: October 31, 2005.

Time: 11 a.m. to 11:45 a.m.

Agenda: The purpose of the meeting will be to review the key Sarcoma PRG recommendations.

Place: National Institutes of Health, National Cancer Institute, 31 Center Drive, Room 11A48, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cherie Nichols, Director of Science Planning and Assessment, National Cancer Institute, National Institutes of Health, Building 6116, Room 205, Bethesda, MD 20892, (301) 496–5515.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/joint/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20755 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 7, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: Discussion of Program policies and issues.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 9112, Bethesda, MD 20892.

Contact Person: Robert B. Moore, PhD, Health Scientist Administrator, Blood Diseases Program, Division of Blood Disease and Resources, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 10162, Bethesda, MD 20892, 301/435–0050.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20730 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Scientist Development Awards (K01s).

Date: November 3–4, 2005.

Time: 6 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heaart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–0314, *huangz@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Innovative Technologies for Engineering Small Blood Vessels.

Date: November 9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: David A. Wilson, PhD, Scientific Review Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7204, MSC 7924, Bethesda, MD 20892, 301/435–0929.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Program Project Applications (PO1s).

Date: November 14, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Valerie L. Prenger, PhD, Scientific Review Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924, (301) 435–0270. *prengerv@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 3, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20751 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Emphasis Panel, Review of Research Program Projects (P01's).

Date: November 3–4, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *Worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, HIEHS Hazardous Waste Worker Health and Safety Training: 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20731 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, National Research Service Award Predoctoral Training Program in Neuroscience.

Date: November 4, 2005.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Hyatt Washington, 1000 H Street NW., Washington, DC 20001.

Contact Person: Yong Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6104, *yyao@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NRSA Research Training.

Date: November 5, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20732 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, NIH–NIBIB P01–J1 Review Meeting.

Date: November 30, 2005.

Time: 8 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Park Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20733 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Mentored Patient—Oriented Research Career Development Application (K23).

Date: November 3, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20734 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Program Projects (P01).

Date: October 28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, PO Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20737 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Osteoporosis: Molecular And Cellular Mechanisms.

Date: October 24–25, 2005.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alessandra M. Bini, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, 301–402–7708, *binia@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer Cell Repository.

Date: October 31, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Elder Mistreatment.

Date: October 31–November 1, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Reproductive Hormones and the Brain.

Date: November 3–4, 2005.
Time: 6 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Signal Transduction.
Date: November 4, 2005.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Pathologic Protein.
Date: November 7–8, 2005.
Time: 3 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Genes Responsible for Prolonged Existence.
Date: November 15–16, 2005.
Time: 6 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20738 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Neonatal Research Network.
Date: November 3–4, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20745 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Centers for Schizophrenia and ADHD.
Date: November 3–4, 2005.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Bettina D. Acuna, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–1178, *acunab@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Review of HIV/AIDS T32 Application.
Date: November 3, 2005.
Time: 2 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301/443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Centers Program for Research on HIV/AIDS and Mental Health.
Date: November 17, 2005.
Time: 10 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Serena P. Chu, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–0004, *sechu@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, P50 Minority SEP 01.
Date: November 29, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, P50 Minority SEP 02.

Date: December 7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20746 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpreters or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to be public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personal qualifications and performance, and the competence of individuals investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: November 6–8, 2005.

Closed: November 6, 2005, 7 p.m. to 10 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: November 7, 2005, 8 a.m. to 11:10 a.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Genetics.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: November 7, 2005, 11:10 a.m. to 12:50 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: November 7, 2005, 12:50 p.m. to 4:40 p.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Genetics.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: November 7, 2005, 4:40 p.m. to 6 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: November 8, 2005, 8 a.m. to 10:30 a.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Genetics.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: November 8, 2005, 10:30 a.m. to 11:50 a.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: November 8, 2005, 11:50 a.m. to 12:55 p.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Genetics.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: November 8, 2005, 12:55 p.m. to 3 p.m.

Agenda: To review and evaluate final Program Review and Tenure Track Review of employees.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K. Akiyama, PhD, Division of Intramural Research, Nat. Institutes of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: October 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20747 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, K22 Review.

Date: December 5, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Division of Extramural Programs, National Library of Medicine, 6705

Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (Telephone Conference Call).

Contact Person: Arthur A. Petrosian, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *Petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20735 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, October 20, 2005, 5 p.m. to October 21, 2005, 2:30 p.m., Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202 which was published in the **Federal Register** on September 28, 2005, 70 FR 56727–56729.

The meeting is cancelled due to the reassignment of the applications.

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20736 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–05–114: Quick-Trials for Imaging and Image-Guided Interventions.

Date: October 21, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eileen W. Bradley, DSC Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradley@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Systemic Lupus Erythematosus.

Date: October 27, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Hotel, 2505 Wisconsin Ave NW., Washington, DC 20007.

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1187, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel CIMP in Breast Cancer.

Date: October 27, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eva Petrakova, PhD, MPH Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1716 *petrakoe@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Research and Field Studies of Infectious Diseases: Quorum.

Date: October 28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washignton, DC 20037.

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808Bethesda, MD 20892. (301) 435–1150. *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies R03's, R15's, R21's and Fellowships.

Date: October 28, 2005.

Time: 8:15 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Autoimmune Vaccines for Cancer Therapy.

Date: October 28, 2005.

Time: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research on Ethical Issues in Human Studies.

Date: October 28, 2005.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Breast Cancer Counseling.

Date: October 28, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Arlington Virginia Hilton, 950 North Stafford Street, Arlington, VA 22203.

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NK Cells in Cancer.

Date: October 28, 2005.

Time: 3:45 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adolescent Depression.
Date: October 28, 2005.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epigenetic Changes in Mouse Skin Tumor Susceptibility.
Date: October 28, 2005.
Time: 12 p.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.
Date: October 31–November 1, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jean Dow Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301–435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Conflicts in Biological Chemistry and Macromolecular Biophysics.
Date: October 31, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F–13 Fellowship.
Date: October 31–November 1, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications. and/or proposals.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: John C. Pugh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment SBIR/STTR.
Date: October 31–November 1, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Hungyi Shau, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Therapeutics and Biology Study Section.
Date: October 31–November 1, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bo Hong, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.
Date: October 31–November 1, 2005
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Malgorzata Klosek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery and Development SBIR/STTR
Date: October 31, 2005.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037
Contact Person: Sergei Ruvinov, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Surgery, Anesthesiology, and Trauma.
Date: October 31, 2005.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20739 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 17, 2005, 1 p.m. to October 17, 2005, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 30, 2005, 70 FR 57304–57305.

The meeting will be held on October 13, 2005. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20740 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP); Report on Carcinogens; Status of Nominations to the 12th Report on Carcinogens (RoC): Request for Comments and Nominations of Scientific Experts

AGENCY: National Institute of Environmental Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Request for Comments and Nominations of Scientific Experts.

SUMMARY: The NTP invites public comments on an updated list of nominations proposed for review in the 12th RoC and the nomination of scientists who have expertise and/or knowledge relevant to the evaluation of carcinogenicity for these nominations (see **SUPPLEMENTARY INFORMATION**). Information on the nominations under consideration for the RoC can be obtained at the NTP Web site *http://ntp.niehs.nih.gov* (select ''Report on Carcinogens'') or by contacting Dr. C.W. Jameson at the address provided below.

DATES: Comments and nominations will be accepted until November 17, 2005.

ADDRESSES: All correspondence should be directed to Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice provides an update on the current status of and/or additions to the list of nominations identified in earlier **Federal Register** notices relevant to the 12th RoC [69FR28940 (May 19, 2004) and 69FR62276 (October 25, 2004)]. All but the newly identified nomination of formaldehyde were announced in earlier **Federal Register** notices. Any additional nominations for the 12th RoC or modifications to the nominations in the attached table will be announced in future **Federal Register** notices.

Request for Comments on Nominations to the RoC

The following table identifies the nominations that the NTP has under consideration for review as either a new listing in the RoC or as a change in the current listing. These nominations are provided with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. The NTP solicits public input on these nominations and asks for relevant information concerning their carcinogenicity as well as current data on production, patterns of use, or human exposure. The NTP also invites interested parties to identify any scientific issues related to the listing of a specific nomination in the RoC that they feel should be addressed during the reviews. Individuals who submitted comments in response to the May 19, 2004 **Federal Register** (69FR28940) and/or the October 25, 2004 **Federal Register** notice (69FR62276) need not re-submit their comments as they are already part of the public record. Individuals submitting public comments are asked to include relevant contact information [name, affiliation (if any), address, telephone, fax, and e-mail] and sponsoring organization, if applicable. Written submissions will be made available on the NTP Web site as they are received (*http://ntp.niehs.nih.gov/* select ''Report on Carcinogens'') and added to the public record.

Request for Nominations of Scientific Experts

The NTP solicits nominations of scientists who have expertise and/or knowledge relevant to the evaluation of carcinogenicity for the selected nominations. These scientists should have expertise in various aspects of toxicology, epidemiology, carcinogenesis, or other relevant areas of science (*e.g.*, genetic toxicity, metabolism, etc.) and/or experience with the agent being reviewed. The experts may be used to write and/or review the background documents prepared on selected nominations. Nominations of scientists should include contact information for the nominee [name, affiliation (if any), address, telephone, fax, and e-mail], the specific nominated agent(s) (listed in the table below) for which they are being recommended as an expert, and a curriculum vitae (if possible). Contact information for the nominator must also be provided.

Additional Nominations Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for review for future RoCs. Nominations should contain a rationale for review. Appropriate background information and relevant data [e.g., journal articles, NTP Technical Reports, International Agency for Research on Cancer (IARC) listings, exposure surveys, release inventories, etc.] that support the review of a nomination should be provided or referenced when possible. Contact information for the nominator should also be included [name, affiliation (if any), address, telephone, fax, and e-mail].

Background Information on the Report on Carcinogens

The RoC is a congressionally mandated document [Section 301(b)(4) of the Public Health Services Act, 42 U.S.C. 241(b)(4)], published by the Secretary of Health and Human Services (HHS), that identifies agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a carcinogenic hazard to human health. The Secretary, HHS, has delegated responsibility for preparing the draft report to the NTP. Substances are listed in the RoC as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen. Review of nominations (substances that are under consideration for listing or removing from the RoC) involves a multi-step scientific review process with opportunity for public comment.

Dated: October 6, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

STATUS OF NOMINATIONS TO BE REVIEWED FOR THE REPORT ON CARCINOGENS

Nomination/CAS No.	Primary uses or exposures	Nominator	Basis for nomination	Status
[1] Herbal remedies containing aristolochic acid. *Note—this nomination was previously identified as ''Aristolochia-Related Herbal Remedies''.	Several *Aristolochia* species (notably *A. contorta, A. debilis, A. fangchi* and *A. manshuriensis*) have been used in traditional Chinese medicine as antirheumatics, as diuretics, in the treatment of edema, and for other conditions such as hemorrhoids, coughs, and asthma.	NIEHS	Herbal remedies containing the plant genus *Aristolochia:* IARC [2] finding of sufficient evidence of carcinogenicity in humans (IARC Monograph Vol. 82, 2002).	Review for possible listing in 12th RoC.

STATUS OF NOMINATIONS TO BE REVIEWED FOR THE REPORT ON CARCINOGENS—Continued

Nomination/CAS No.	Primary uses or exposures	Nominator	Basis for nomination	Status
Aristolochic Acid	Aristolochic acid, the principle extract from Aristolochia, is a mixture of nitrophenanthrene carboxylic acids.	NIEHS	Naturally occurring mixtures of aristolochic acids: IARC [2] finding of sufficient evidence of carcinogenicity in animals and limited evidence in humans (IARC Monograph Vol. 82, 2002).	Review for possible listing in 12th RoC.
Asphalt fumes	Asphalt is a petroleum product used in paving and roofing operations. Asphalt fumes are a cloud of small particles generated after volatilization of asphalt aggregates.	Private Individual	Human epidemiological studies have reported an increased risk of lung cancer among workers exposed to asphalt fumes and asphalt fumes caused skin tumors in experimental animals. Additionally, known human carcinogens (polycyclic aromatic hydrocarbons or PAHs) have been found in asphalt fumes.	Defer review of nomination until the 13th RoC.
Atrazine (192–24–9)	Atrazine is an herbicide used to control grass and broad-leaved weeds. Atrazine has been detected at levels that exceeded or approached the maximum contaminant level (MCL) for atrazine in 200 community surface drinking water systems.	NIEHS	IARC [2] finding of sufficient evidence of carcinogenicity in animals (IARC Monograph Vol. 73, 1999).	Defer review of nomination until the 13th RoC.
Benzofuran (271–89–6)	Benzofuran is produced by isolation from coal-tar oils. Benzofuran is used in the manufacture of coumarone-indene resins, which harden when heated and are used to make floor tiles and other products.	NIEHS	Results of a NTP bioassay (NTP Technical Report 370, 1989) [3], which reported clear evidence of carcinogenicity in male and female mice and some evidence of carcinogenicity in female rats.	Defer review of nomination until the 13th RoC.
Captafol (2425–06–01)	Captafol is a fungicide that has been widely used since 1961 for the control of fungal diseases in fruits, vegetables, and some other plants. Use of captafol in the United States was banned in 1999.	NIEHS	IARC [2] finding of sufficient evidence of carcinogenicity in animals (IARC Monograph Vol. 53, 1991). IARC also noted that captafol is positive in many genetic assays including the in-vivo assay for dominant lethal mutation.	Review for possible listing in 12th RoC.
[1] Cobalt-tungsten carbide powders and hard metals. *Note—This nomination was previously identified as "Cobalt/Tungsten-Carbide Hard Metal Manufacturing".	Cobalt-tungsten carbide hard-metals are manufactured by a process of powder metallurgy from tungsten and carbon (tungsten carbide), and small amounts of other metallic compounds using cobalt as a binder. They are used to make cutting and grinding tools, dies, and wear products for a broad spectrum of industries including oil and gas drilling, and mining.	NIEHS	Recent human cancer studies on the hard metal manufacturing industry showing an association between exposure to hard metals (cobalt tungsten-carbide) and lung cancer.	Review for possible listing in 12th RoC.

STATUS OF NOMINATIONS TO BE REVIEWED FOR THE REPORT ON CARCINOGENS—Continued

Nomination/CAS No.	Primary uses or exposures	Nominator	Basis for nomination	Status
Di (2-ethylhexyl) phthalate (DEHP) (117–81–7).	DEHP is mainly used as a plasticizer in polyvinyl chloride (PVC) resins for fabricating flexible vinyl products. PVC resins have been used to manufacture toys, dolls, vinyl upholstery, tablecloths, and many other products.	Private Individual	Currently listed in the RoC as reasonably anticipated to be a human carcinogen. IARC [2] reclassification as not classifiable as to its carcinogenicity to humans (Group 3) (IARC Monograph Vol. 77, 2000). IARC stated that there was sufficient evidence for the carcinogenicity in experimental animals; however, the mechanism for liver tumor involves peroxisome proliferation that is not relevant to humans.	Review for possible removal of listing in 12th RoC.
Etoposide in combination with cisplatin and bleomycin.	Etoposide in combination with cisplatin and bleomycin is used to treat testicular germ cell cancers.	NIEHS	IARC [2] finding of sufficient evidence of carcinogenicity in humans (IARC Monograph Vol. 76, 2000).	Review for possible listing in 12th RoC.
Etoposide (33419–42–0)	Etoposide is a DNA topoisomerase II inhibitor used in chemotherapy for non-Hodgkin's lymphoma, small-cell lung cancer, testicular cancer, lymphomas, and a variety of childhood malignancies.	NIEHS	IARC [2] finding of limited evidence of carcinogenicity in humans (IARC Monograph Vol. 76, 2000).	Review for possible listing in 12th RoC.
Formaldehyde (50–00–0)	Formaldehyde is primarily used in the production of resins that are used in the production of many different products including plastics, adhesives and binders for wood products, pulp and paper, synthetic fibers, and in textile finishing. It is also used as a disinfectant and preservative and as an intermediate for many industrial chemicals.	NIEHS	Formaldehyde (gas) is currently listed in the RoC as reasonably anticipated to be a human carcinogen. Nominated for reconsideration based on the 2004 IACR [2] review, which concluded that there was sufficient evidence for the carcinogenicity of formaldehyde in humans (IARC Monograph Vol. 88, 2004).	Review for possible reclassification of listing status in 12th RoC.

STATUS OF NOMINATIONS TO BE REVIEWED FOR THE REPORT ON CARCINOGENS—Continued

Nomination/CAS No.	Primary uses or exposures	Nominator	Basis for nomination	Status
[1] Certain Glass Wool Fibers. *Note—This nomination was previously identified as "Glass wool (respirable size): Two nominations: (1) Insulation glass wool fibers, and (2) Special purpose glass fibers".	Glass wool fibers, which are a type of synthetic vitreous fibers, are an inorganic fibrous material manufactured primarily from glass and processed inorganic oxides. The composition of these fibers may vary substantially because of differences in end-use, manufacturing requirements, and biopersistence considerations. The major uses of glass wool are in thermal, electrical, and acoustical insulation, weatherproofing, and filtration media. Some glass wool fibers (special purpose fibers) are used for high-efficiency air filtration media, and acid battery separators.	North American Insulation Manufacturers Association nominated glass wool (respirable size) for delisting. NIEHS recommended that the nomination be defined as "certain glass wool fibers" because of the considerable differences in the composition of glass wool fibers.	Glass wool (respirable size) is currently listed in the RoC as reasonably anticipated to be a human carcinogen. Insulation glass wool: IARC [2] finding of limited evidence of carcinogenicity in animals and evaluation as not classifiable as to its carcinogenicity to humans (Group 3) (IARC Monograph Vol. 81, 2002). Special-purpose glass fibers: IARC [2] finding of sufficient evidence of carcinogenicity in animals (IARC Monograph Vol. 81, 2002).	Review for possible listing in 12th RoC.
Metalworking Fluids	Metal working fluids are complex mixtures that may contain mixtures of oil, emulsifiers, anti-weld agents, corrosion inhibitors, extreme pressure additives, buffers biocides, and other additives. They are used to cool and lubricate tools and working surfaces in a variety of industrial machining and grinding operations.	NIEHS	Recent human cancer studies of metal working fluids that show an association between exposure to these materials and cancer at several tissue sites.	Review for possible listing in 12th RoC.
ortho-Nitrotoluene (88–72–2).	ortho-Nitrotoluene is used to synthesize agricultural and rubber chemicals, azo and sulfur dyes, and dyes for cotton, wool, silk, leather, and paper.	NIEHS	Results of a NTP bioassay (NTP Technical Report 504, 2002) [3], which reported clear evidence of carcinogenicity in rats and mice.	Review for possible listing in 12th RoC.
Oxazepam (604–75–1)	Oxazepam is a benzodiazepine used extensively since the 1960s for the treatment of anxiety and insomnia and in the control of symptoms of alcohol withdrawal.	NIEHS	Results of a NTP bioassay (NTP Technical Report 443, 1993) [3], which reported clear evidence of carcinogenicity in male and female mice.	Defer review of nomination until the 13th RoC.
Riddelliine (23246–96–0) ..	Riddelliine is found in class of plants growing in western United States. Cattle, horses, and sheep ingest these toxic plants. Residues have been found in milk and honey.	NIEHS	Results of a NTP bioassay (NTP Technical Report 508, 2003) [3], which reported clear evidence of carcinogenicity in male and female rats and mice.	Review for possible listing in 12th RoC.
Styrene (100–42–5)	Styrene is used in the production of polystyrene, acrylonitrile-butadiene-styrene resins, styrene-butadiene rubbers and latexes, and unsaturated polystyrene resins.	Private Individual	IARC [2] finding of limited evidence of carcinogenicity in animals and limited evidence of carcinogenicity in humans (IARC Monograph Vol. 82, 2002).	Review for possible listing in 12th RoC.

STATUS OF NOMINATIONS TO BE REVIEWED FOR THE REPORT ON CARCINOGENS—Continued

Nomination/CAS No.	Primary uses or exposures	Nominator	Basis for nomination	Status
Talc (Two nominations) ..... (1) Cosmetic talc ..... (2) Occupational exposure to talc.	Talc occurs in various geological settings around the world. Exposure to general population occurs through use of products such as cosmetics. Occupational exposure occurs during mining, milling, and processing.	NIEHS	The NTP deferred consideration of listing talc (asbestiform and non-asbestiform talc) in the 10th RoC because its 2000 review of talc found that there has been considerable confusion over the mineral nature and consequences of exposure to talc, both containing asbestiform fibers and not containing asbestiform fibers. It has become evident that the literature on both forms of talc, with a few exceptions, provides an inadequate characterization of the actual materials under study to enable one to reach definitive conclusions concerning the specific substances responsible for the range of adverse health outcomes reported.	Withdrawn from review.
Teniposide (29767–20–2)	Teniposide is a DNA topoisomerase II inhibitors used mainly in the treatment of adult and childhood leukemia.	NIEHS	IARC [2] finding of limited evidence of carcinogenicity in humans (IARC Monograph Vol. 76, 2000).	Review for possible listing in 12th RoC.
Vinyl Mono-Halides as a class.	Vinyl halides are used in the production of polymers and copolymers. Vinyl bromide is mainly used in polymers as a flame retardant and in the production of monoacrylic fibers for carpet-backing materials. Vinyl chloride is used to produce polyvinyl chloride and copolymers. Vinyl fluoride is used in the production of polyvinyl fluoride, which when laminated with aluminum, steel and other materials, is used as a protective surface for the exteriors of residential and commercial buildings.	NIEHS	Vinyl fluoride and vinyl bromide are currently listed in the RoC as reasonably anticipated to be a human carcinogen and vinyl chloride is currently listed in the RoC as a known to be a human carcinogen. Vinyl mono-halides: Structural similarities and common mechanisms of tumor formation.	Defer review of nomination until the 13th RoC.

[1] Nomination has been redefined based on public comments received from earlier **Federal Register** notices and/or review of the literature.
[2] International Agency for Research on Cancer (IARC). IARC Monographs are available from *http://monographs.iarc.fr/.*
[3] NTP Technical Reports are available at *http://ntp.niehs.nih.gov/* see "NTP Study Reports."

[FR Doc. 05–20729 Filed 10–17–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1605–DR]

Alabama; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1605–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005: Marengo County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20770 Filed 10–17–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1603–DR]

Louisiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1603–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

All parishes in the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20769 Filed 10–17–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

Evangeline, Sabine, St. Landry, and Vernon Parishes for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

De Soto, Natchitoches, and Rapides Parishes for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20773 Filed 10–17–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1606–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1606–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

Angelina, Nacogdoches, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Walker Counties for Public Assistance [Categories C-G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

Cherokee, Gregg, Harrison, Houston, Panola, and Rusk Counties for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.) (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20771 Filed 10–17–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1606–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1606–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas P. Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Alexander S. Wells as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20772 Filed 10–17–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3216–EM]

Texas; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3216–EM), dated September 2, 2005, and related determinations.

EFFECTIVE DATE: September 24, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

This action terminates my appointment of Gary Jones as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20774 Filed 10–17–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–06–1610–PH–241A]

Notice of Resource Advisory Committee Meeting

AGENCY: Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) meeting.

SUMMARY: Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: Two days of meetings are scheduled for November 15 and 16, 2005, at the GSENM Visitor Center, Conference Room, 745 HWY 89 East, Kanab, Utah.

FOR FURTHER INFORMATION CONTACT: Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4310, or email *larry_crutchfield@blm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the GSENMAC will meet on November 15 and 16, 2005, in Kanab, Utah. The meetings will be held at the GSENM Visitor Center, 745 HWY 89 East, Kanab, Utah. The meeting on November 15 will begin at 9:30 a.m. and conclude at 6 p.m.; the meeting on November 16 will begin at 8 a.m. and conclude at 12 p.m. An orientation site visit to the Buckskin Mountain vegetation restoration and fuels reduction project is scheduled from 12 p.m. to 5 p.m. on November 16.

The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have several primary tasks (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives. (2) Review appropriate research proposals and make recommendations on project necessity and validity. (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above. (4) Could be consulted on issues such as protocols for specific projects.

Topics to be presented and discussed by the GSENMAC include: Elections for GSENMAC Chair and Vice Chair; Management updates to the GSENMAC; Sub-committee reports (Rangeland Health, Science, and Marketing/Partnerships/Revenue); vegetation restoration and fuels reduction on Buckskin Mountain.

Members of the public are welcome to address the council from 5 p.m. to 6 p.m., local time on November 15, 2005, in Kanab, Utah, at the GSENM Vistior Center. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent: Grand Staircase-Escalante National Museum. Attn.: Larry Crutchfield, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings, including the site orientation, are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: October 12, 2005.

Marietta Eaton,

Acting Monument Manager, Grand Staircase-Escalante National Monument.

[FR Doc. 05–20795 Filed 10–17–05; 8:45 am]

BILLING CODE 4310–DQ–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–344, 391–A, 392–A and C, 393–A, 394–A, 396, and 399–A (Second Review)]

Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty order investigations on certain bearings from China, France, Germany, Italy, Japan, Singapore, and the United Kingdom.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain bearings from China, France, Germany, Italy, Japan, Singapore, and the United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 12, 2005.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On September 7, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 F.R. 54568, September 15, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that

filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on April 3, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 25, 2006, at the International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 14, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 18, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 12, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 4, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 4, 2006. On May 30, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 1, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20838 Filed 10–17–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Second Review)]

Cased Pencils From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on cased pencils from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 4, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 F.R. 38192, July 1, 2005) of the subject five-year review was

adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 26, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 31, 2005 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 31, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20837 Filed 10–17–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by General Pencil Co., Inc., Musgrave Pencil Co., Rose Moon, Inc., Sanford, L.P., and Tennessee Pencil Co. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–639 and 640 (Second Review)]

Forged Stainless Steel Flanges From India and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on forged stainless steel flanges from India and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 38195, July 1, 2005) of the subject five-year reviews was adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on November 14, 2005, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before November 17, 2005, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Gerlin, Inc. and Maass Flange Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

reviews by November 17, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determinations.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 12, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20799 Filed 10–17–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–544]

In the Matter of Certain Hand-Held Mobile Computer Devices, Components Thereof and Cradles Therefor; Notice of Decision Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on September 26, 2005, terminating the investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the IDs and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 3, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Intermec Technologies Corporation of Everett, Washington, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain hand-held mobile computing devices, components thereof and cradles therefor by reason of infringement of claims 62, 66, 67, 71, 126, and 130–132 of U.S. Patent No. 5,410,141; claims 1–3 of U.S. Patent No. 5,468,947; and claims 17–25 and 27–31 of U.S. Patent No. 6,375,344. 70 FR 44693 (August 3, 2005). The complainant named Symbol Technologies, Inc. and Symbol de Mexico, Sociedad de R.I. de C.V. as respondents.

On September 9, 2005, the complainant and respondents jointly moved to terminate the investigation based on withdrawal of the complaint and suspend the procedural schedule. On September 21, 2005, the Commission investigative attorney filed a response in support of the joint motion.

On September 26, 2005, the ALJ issued an ID (Order No. 5) granting the joint motion to terminate. No party petitioned for review of the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: October 12, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20797 Filed 10–17–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–663 (Second Review)]

Explanation of Commission Determination on Adequacy in Paper Clips From China

On October 4, 2005, the Commission unanimously determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(c)(3)(B).

The Commission determined that the domestic interested party group response to the notice of institution was adequate. The Commission received responses to the notice of institution from two domestic producers, ACCO Brands USA LLC and Officemate International Corporation. Because the Commission received adequate responses from two producers representing the overwhelming majority of domestic production, the Commission determined that the domestic interested party group response was adequate.

The Commission did not receive a response from any respondent interested party, and therefore determined that the respondent interested party group response to the notice of institution was inadequate. In the absence of an adequate respondent interested party group response, and any other circumstances that it deemed warranted proceeding to a full review, the Commission determined to conduct an expedited review. A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's Web site (*http://www.usitc.gov*).

By order of the Commission.

Issued: October 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20798 Filed 10–17–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 11, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance.

OMB Number: 1205–0342.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; and State, Local or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 3,030.

Annual Responses: 3,030.

Average Response time: 20 minutes per respondent and 5 minutes for State agency for each petition received.

Total Annual Burden Hours: 1,263.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Information on this form is required in order to make a determination on Trade Adjustment Assistance and Alternative Trade Adjustment Assistance petitions filed on behalf of service workers according to Section 223 of the Trade Act, as amended.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–20724 Filed 10–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration 132nd Plenary Meeting; Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 132nd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on November 3, 2005.

The session will take place in Room S–2508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The meeting will run from 9:30 a.m. to approximately 11:30 a.m. and, if necessary, from 1:30 p.m. to 3:30 p.m. The purpose of the open meeting is for the chairpersons of the three Working Groups to submit reports on their study topics for the full Advisory Council's review and acceptance, and for the Council to present a summary of the reports to the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to any topic under consideration by the Advisory Council may do so by submitting 20 copies to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before October 27, 2005 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 27 at the address indicated in this notice.

Signed at Washington, DC, this 12th day of October, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–20722 Filed 10–17–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Working Group on Retirement Plan Distributions and Options; Working Group on Communications to Retirement Plan Participants and Working Group on Improving Plan Communications for Health and Welfare Plan Participants; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on November 2, 2005 of the Working Groups assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issues of (1) Retirement plan distributions, (2) communications to retirement plan participants, and (3) improving plan communications for health and welfare plan participants.

The sessions will take place in Room N S4215 B–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting is for the Working Groups to conclude their report/recommendations for the Secretary of Labor. The meetings will start at 9 a.m., with the Working Group on Retirement Plan Distributions and Options meeting first, followed by the Working Group on Communications to Retirement Plan Participants, and then the Working Group on Improving Plan Communications for Health and Welfare Plan Participants. This will be followed

by a combined meeting of the latter two Working Groups.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before October 27, 2005 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before October 27, 2005 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address any of the Working Groups should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 27 at the address indicated.

Signed at Washington, DC this 12th day of October, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–20723 Filed 10–17–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Sanjevani Health and Rejuvenation Resort, Ilfeld, New Mexico.

Principal Product: The loan, guarantee, or grant applicant plans to acquire, renovate, and construct a resort/spa on ranch property in Ilfeld, New Mexico. The NAICS industry code for this enterprise is 72111 Hotels (except casino hotels) with health spa facilities (i.e., resorts) and 44812 women's clothing store.

DATES: All interested parties may submit comments in writing no later than November 1, 2005. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number 202–693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process.

Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC this 11th day of October, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E5–5716 Filed 10–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: P&M Plastics,Inc., Mountainair, New Mexico.

Principal Product: The loan, guarantee, or grant applicant plans to construct and operate a bio-based manufacturing plant to produce ALTREE, a patented wood fortified product. ALTREE is made utilizing small diameter timber and recycled plastics. The NAICS industry code for this enterprise is 321219. (Reconstituted Wood Product Manufacturing.)

DATES: All interested parties may submit comments in writing no later than November 1, 2005. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an

area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 11th day of October, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E5–5717 Filed 10–17–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 156th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 4, 2005 from 9 a.m.–12 p.m. (ending time is tentative) in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will be an update on Congressional/White House activities. The meeting will include three presentations. The first will address the *Creativity and Aging Study,* with Paula Terry (NEA Director, AccessAbility), Dr. Gene Cohen (George Washington University), and Jeanne Kelly (Levine School of Music). The second will focus on Folk and Traditional Arts, with speakers Barry Bergey (NEA Director, Folk & Traditional Arts), Joe Wilson (National Center for Folk & Traditional Arts), and Wayne Henderson (NEA National Heritage Fellow, guitarist). The final presentation, led by Eileen B. Mason (NEA Senior Deputy Chairman) and Douglas Sonntag (NEA Director, Dance), will be on the Endowment's 40th anniversary. This will be followed by review and voting on applications and guidelines. The meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202–682–5532, TTY–TDD 202–682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202–682–5570.

Dated: October 12, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 05–20812 Filed 10–17–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND PLACE: Monday, October 31, 2005, from 2 p.m. to 4:30 p.m.

AGENDA: Committee Meetings of the Sixth National Museum and Library Service Board Meeting:

2 p.m.–3:13 p.m.—Executive Session. (Closed to the Public.)

3:30 p.m.–4:30 p.m.—Committee Partnerships and Government Affairs. (Open to the Public.)

I. Staff Reports.

II. Other Business.

3:30 p.m.–4:30 p.m.—Policy and Planning Committee. (Open to the Public.)

I. Staff Reports.

II. Other Business.

PLACE: The meeting will be held at the Institute of Museum and Library Services. 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

TIME AND DATE: Tuesday, November 1, 2005, from 9 a.m. to 12:30 p.m.

AGENDA: Sixth National Museum and Library Services Board Meeting (Open to the Public):

I. Welcome.

II. Approval of Minutes.

III. Program Reports.

IV. Committee Reports.

V. Board program: Engaging America's Youth.

VI. Other Business.

VII. Adjournment.

PLACE: The meeting will be held at the Institute of Museum and Library Services, 1800 M Street, NW. 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

STATUS: Parts of this meeting will be closed to the public as identified in the meeting agenda and supplementary information. The rest of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services. The Executive Session of the Meeting from 2 p.m. to 3:15 p.m. on Monday, October 31, 2005 will be closed pursuant to subsections (c)(4) and (c)(6) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The meetings from 3:30 p.m. until 4:30 p.m. on Monday, October 31, 2005 and the meeting from 9 a.m. to 12:30 p.m. on Tuesday, November 1, 2005 are open to the public. If you need special

accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone: (202) 653–4676; TDD (202) 653–4699 at least seven (7) days prior to the meeting date.

Dated: October 13, 2005.

Teresa LaHaie,

Administrative Officer, Institute of Museum and Library Services.

[FR Doc. 05–20876 Filed 10–14–05; 9:27 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 24, 2005, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on October 12, 2005 to: Shane B. Kanatous, Permit No. 2006–015.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–20862 Filed 10–17–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: October 27, 2005, 8 a.m. to 5 p.m. October 28, 2005, 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235.

Type of Meeting: Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities of the polar research community, to provide advice to the Director of OPP on issues related to long range planning.

Agenda: Staff presentations on program updates; discussions on International Polar Year; discussions on icebreakers.

Reason for Late Notice: Due to an oversight caused by the departure of a key member of the Office of Polar Programs.

Dated: October 12, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20764 Filed 10–17–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; 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: Advisory Committee for Social, Behavioral, and Economic Sciences (ACSBE) (#1171).

Date and Time: November 3, 2005 8 a.m.–5 p.m., November 4, 2005 8 a.m.–12:30 p.m.

Place: National Science Foundation, Stafford II Building, Suite 555, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Mr. Tyrone Jordan Office of the Assistant Director, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, VA 22230, 703–292–8741.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda: Discussion on issues, role and future direction of the Directorate for Social, Behavioral, and Economic Sciences.

Dated: October 13, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20863 Filed 10–17–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 2, 2005, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

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 the internal personnel rules and practices of the ACRS, 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:

Wednesday, November 2, 2005, 1:30 p.m.–3 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will 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, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (e.t.) 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 7:30 a.m. and 4:15 p.m. (e.t.). 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 12, 2005.

Michael R. Snodderly,

Acting Chief, ACRS/ACNW.

[FR Doc. E5–5733 Filed 10–17–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 3–5, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Thursday, November 3, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10a.m.: Final Review of the License Renewal Application for the Point Beach Nuclear Plant, Units 1 and 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Management Company, LLC regarding the license renewal application for the Point Beach Nuclear Plant, Units 1 and 2 and the associated final Safety Evaluation Report prepared by the NRC staff.

10:15 a.m.–11:45 a.m.: Draft Final Generic Letter 2005-xx, ''Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final version of the Generic Letter 2005-xx on Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power.

12:45 p.m.–2:45 p.m.: Economic Simplified Boiling Water Reactor (ESBWR) Design (Open)—The Committee will hear presentations by and hold discussions with representatives of the General Electric Nuclear Energy and the NRC staff regarding the general description of the ESBWR design and the NRC staff's schedule for reviewing the ESBWR design certification application.

3 p.m.–5 p.m.: Draft ACRS Report to the Commission on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program.

5:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, November 4, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Digital Systems Research Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final digital systems research plan and related matters.

10:15 a.m.–11:15 a.m.: Status of Rulemaking on Post-Fire Operator Manual Actions (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the rulemaking on post-fire operator manual actions.

11:15 a.m.–12:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

1:30 p.m.–1:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:45 p.m.–3:15 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following topics scheduled for discussion with the NRC Commissioners between 1 and 3 p.m. on Thursday, December 8, 2005: Overview by the ACRS Chairman; Issues Related to New Plant Licensing (including Technology Neutral Framework); Proposed Alternative Embrittlement Criteria in 10 CFR 50.46; Fire Protection Matters; and Power Uprate Technical Issues.

3:30 p.m.–7 p.m.: Preparation of ACRS Reports(Open)—The Committee will discuss proposed ACRS reports.

Saturday, November 5, 2005, Conference Room–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 2005 (70 FR 56936). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) 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).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 12, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–5734 Filed 10–17–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of October 17, 24, 31, November 7, 14, 21, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 17, 2005

Tuesday, October 18, 2005

9:30 a.m.
Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: Dan Gillen, (301) 415–7295.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 24, 2005—Tentative

Wednesday, October 26, 2005

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1).

Thursday, October 27, 2005

10 a.m.
Discussion of Security Issues (Closed—Ex. 1).

Week of October 31, 2005—Tentative

Tuesday, November 1, 2005

9:30 a.m.
Briefing on Implementation of Davis-Besse Lessons Learned Task Force (DBLLTF) Recommendations (Public Meeting). (Contact: Brendan Moroney, (301) 415–3974.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 7, 2005—Tentative

There are no meetings scheduled for the Week of November 7, 2005.

Week of November 14, 2005—Tentative

There are no meetings scheduled for the Week of November 14, 2005.

Week of November 21, 2005—Tentative

Monday, November 21, 2005

9:30 a.m.
Briefing on Status of New Reactor Issues, Part 1 (Public Meeting). (Contact: Laura Dudes, (301) 415–0146.)

1:30 p.m.
Briefing on Status of New Reactor Issues, Part 2 (Public Meeting). (Contact: Laura Dudes, (301) 415–0146.)

These meetings will be Webcast live at the Web address—*http://www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 13, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–20881 Filed 10–14–05; 10:32 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Document for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: James Smith, Project manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–6459; fax number: (301) 415–5370; e-mail: *jas4@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) continues to issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing either a license application or a license amendment request for a fuel cycle facility under 10 CFR Part 70. The NRC is soliciting public comments on the attached draft ISG document, which will be considered in the final version or subsequent revisions.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on a revised draft Interim Staff Guidance document for fuel cycle facilities. A previous version of this draft received substantive comments; therefore, to provide the public an opportunity to review and comment on the revised version, the document is being re-issued in draft. FCSS-Interim Staff Guidance-10 provides guidance to NRC staff relative to determining whether the minimum margin of subcriticality (MoS) is sufficient to provide an adequate assurance of subcriticality for safety to demonstrate compliance with the performance requirements of 10 CFR 70.61(d).

III. Further Information

The document related to this action is 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 Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS ascension number for the document related to this notice is ML052770515. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

This document may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions should be directed to the NRC contact listed above by November 17, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Dated at Rockville, Maryland this 6th day of October 2005.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

Attachment—Draft FCSS Interim Staff Guidance-10, Revision 1, ''Justification for Minimum Margin of Subcriticality for Safety''

Prepared by Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards

Issue

Technical justification for the selection of the minimum margin of subcriticality for safety for fuel cycle facilities, as required by 10 CFR 70.61(d)

Introduction

10 CFR 70.61(d) requires, in part, that licensees or applicants (henceforth to be referred to as ''licensees'') demonstrate that ''under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety.'' There are a variety of methods that may be used to demonstrate subcriticality, including use of industry standards, handbooks, hand calculations, and computer methods. Subcriticality is assured, in part, by providing margin between actual and expected critical conditions. This interim staff guidance (ISG), however, only applies to margin used in those methods that rely on calculation of k_{eff}, including deterministic and probabilistic computer methods. The use of other methods (e.g., use of endorsed industry standards, widely accepted handbooks, certain hand calculations), containing varying amounts of margin, is outside the scope of this ISG.

For methods relying on calculation of K_{eff}, margin may be provided either in terms of limits on physical parameters of the system (of which K_{eff} is a function), or in terms of limits on K_{eff} directly, or both. For the purposes of this ISG, the term margin of safety will be used to refer to the margin to criticality in terms of system parameters, and the term margin of subcriticality (MoS) will refer to the margin to criticality in terms of K_{eff}. A common approach to ensuring subcriticality is to determine a maximum K_{eff} limit below which the licensee's calculations must fall. This limit will be referred to in this ISG as the Upper Subcritical Limit (USL). Licensees using calculational methods perform validation studies, in which critical experiments similar to actual or anticipated facility calculations are chosen and then analyzed to determine the bias and uncertainty in the bias. The bias is a measure of the systematic differences between calculational method results and experimental data. The uncertainty in the bias is a measure of both the accuracy and precision of the calculations and the uncertainty in the experimental data. A USL is then established that includes allowances for bias and bias uncertainty as well as an additional margin, to be referred to in this ISG as the minimum margin of subcriticality (MMS). The MMS is variously referred to in the nuclear industry as minimum subcritical margin, administrative margin, and arbitrary margin, and the term MMS should be regarded as synonymous with those terms. The term MMS will be used throughout this ISG, and has been chosen for consistency with the rule. The MMS is an allowance for any unknown errors or uncertainties in the method of calculating K_{eff} that may exist beyond those which have been accounted for explicitly in calculating the bias and its uncertainty.

There is little guidance in the fuel facility Standard Review Plans (SRPs) as to what constitutes sufficient technical justification for the MMS. NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' Section 5.4.3.4.4, states that this margin must include, among other uncertainties, ''adequate allowance for uncertainty in the methodology, data, and bias to assure subcriticality.'' However, there has been almost no guidance on how to determine an appropriate MMS. Partly due to the lack of historical guidance, and partly due to differences between facilities' processes and methods of calculation, there have been significantly different MMS values approved for the various fuel cycle facilities over time. In addition, the different ways licensees have of defining margins and calculating K_{eff} limits have made a consistent approach to reviewing K_{eff} limits difficult. Recent licensing experience has highlighted the need for further guidance to clarify what constitutes an acceptable justification for the MMS.

The MMS can have a substantial effect on facility operations (e.g., storage capacity, throughput) and there has, therefore, been considerable recent interest in decreasing margin in K_{eff} below what has been licensed previously. In addition, the increasing sophistication of computer codes and the ready availability of computing resources means that there has been a gradual move towards more realistic (often resulting in less conservative) modeling of process systems. These two factors—the increasing interest in reducing the MMS and the reduction in modeling conservatism—make technical justification of the MMS more risk-significant than it has been in the past. In general, consistent with a risk-informed approach to regulation, a smaller MMS requires a more substantial technical justification.

This ISG is only applicable to fuel enrichment and fabrication facilities licensed under 10 CFR part 70.

Discussion

This guidance is applicable to evaluating the MMS in methods of evaluation that rely on calculation of K_{eff}. The K_{eff} value of a fissionable system depends, in general, on a large number of physical variables. The factors that can affect the calculated value of K_{eff} may be broadly divided into the following categories: (1) The geometric configuration; (2) the material composition; and (3) the neutron distribution. The geometric form and material composition of the system determine—together with the underlying nuclear data (e.g., $v,_X(E)$, cross-section data)—the spatial and energy distribution of neutrons in the system (flux and energy spectrum). An error in the nuclear data or the

geometric or material modeling of these systems can produce an error in the neutron flux and energy spectrum, and thus in the calculated value of K_{eff}. The bias associated with a single system is defined as the difference between the calculated and physical values of K_{eff}, by the following equation:

$\beta = k_{calc} - k_{physical}$

Thus, determining the bias requires knowing both the calculated and physical K_{eff} values of the system. The bias associated with a single critical experiment can be known with a high degree of confidence, because the physical (experimental) value is known a priori ($k_{physical} \approx 1$). However, for calculations performed to demonstrate subcriticality of facility processes (to be referred to as ''applications''), this is not generally the case. The bias associated with such an application (i.e., not a known critical configuration) is not typically known with this same high degree of confidence, because the actual physical K_{eff} of the system is usually not known. In practice, the bias is determined as the average calculated K_{eff} for a set of experiments that cover different aspects of the licensee's applications. The bias and its uncertainty must be estimated by calculating the bias associated with a set of critical experiments having geometric forms, material compositions, and neutron spectra similar to those of the application. Because of the large number of factors that can affect the bias, and the finite number of critical experiments available, staff should recognize that this is only an estimate of the true bias of the system. The experiments analyzed cannot cover all possible combinations of conditions or sources of error that may be present in the applications to be evaluated. The effect on K_{eff} of geometric, material, or spectral differences between critical experiments and applications cannot be known with precision. Therefore, an additional margin (MMS) must be applied to allow for the effects of any unknown uncertainties that may exist in the calculated value of K_{eff} beyond those accounted for in the calculation of the bias and its uncertainty. As the MMS decreases, there needs to be a greater level of assurance that the various sources of bias and uncertainty have been taken into account, and that the bias and uncertainty are known with a high degree of accuracy. In general, the more similar the critical experiments are to the applications, the more confidence there is in the estimate of the bias and the less MMS is needed.

In determining an appropriate MMS, the reviewer should consider the specific conditions and process characteristics present at the facility in question. However, the MMS should not be reduced below 0.02. The nuclear cross sections are not generally known to better than ~1–2%, and thus it is not possible to have a greater level of assurance in the calculated results than this. Moreover, errors in the criticality codes have been discovered over time that have produced K_{eff} differences of roughly this same magnitude of 1–2% (e.g., Information Notice 2005–13, ''Potential Non-Conservative Error in Modeling Geometric Regions in the KENO-V.a Criticality Code'').

Staff should recognize the important distinction between ensuring that processes are safe and ensuring that they are adequately subcritical. The value of K_{eff} is a direct indication of the degree of subcriticality of the system, but is not fully indicative of the degree of safety. A system that is very subcritical (i.e., with $K_{eff} \ll 1$) may have a small margin of safety if a small change in a process parameter can result in criticality. An example of this would be a UO2 powder storage vessel, which is subcritical when dry, but may require only the addition of water for criticality. Similarly, a system with a small MoS (i.e., with $K_{eff} \ll 1$) may have a very large margin of safety if it cannot credibly become critical. An example of this would be a natural uranium system in light water, which may have a K_{eff} value close to 1 but will never exceed 1.

Because of this, a distinction should be made between the margin of subcriticality and the margin of safety. Although a variety of terms are in use in the nuclear industry, the term margin of subcriticality will be taken to mean the difference between the actual (physical) value of k_{eff} and the value of k_{eff} at which the system is expected to be critical. The term margin of safety will be taken to mean the difference between the actual value of a parameter and the value of the parameter at which the system is expected to be critical. The appropriate MMS depends only on the confidence that applications calculated to be subcritical will be subcritical. It does not depend on other aspects of the process (e.g., safety of the process or the ability to control parameters within certain bounds) that may need to be reviewed as part of an overall licensing review.

There are a variety of different approaches that a licensee could choose in justifying the MMS. Some of these approaches and means of reviewing them are described in the following sections, in no particular preferential order. Many of these approaches consist of qualitative arguments, and therefore there will be some degree of subjectivity in determining the adequacy of the MMS. Because the MMS is an allowance for unknown (or difficult to identify or quantify) errors, the reviewer must ultimately exercise his or her best judgement in determining whether a specific MMS is justified. Thus, the topics listed below should be regarded as factors the reviewer should take into consideration in exercising that judgement, rather than any kind of prescriptive checklist.

The reviewer should also bear in mind that the licensee is not required to use any or all of these approaches, but may choose an approach that is applicable to its facility or a particular process within its facility. While it may be desirable and convenient to have a single k_{eff} limit or MMS value (and single corresponding justification) across an entire facility, it is not necessary for this to be the case. The MMS may be easier to justify for one process than for another, or for a limited application versus generically for the entire facility. The reviewer should expect to see various combinations of these approaches, or entirely different approaches, used, depending on the nature of the licensee's processes and methods of calculation. Any approach used must ultimately lead to a determination that there is adequate assurance of subcriticality.

(1) Conservatism in the Calculational Models

The margin in k_{eff} produced by the licensee's modeling practices, together with the MMS, provide the margin between actual conditions and expected critical conditions. In terms of the subcriticality criterion taken from ANSI/ANS–8.17–1984 (R1997), ''Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors'' (as explained in Appendix A): $MoS \geq \Delta K_m + \Delta K_{sa}$ where Δk_m is the MMS and Δk_{sa} is the margin in k_{eff} due to conservative modeling of the system (i.e., conservative values of system parameters).

Two different applications for which the sums on the right hand side of the equation above are equal to each other are equally subcritical. Assurance of subcriticality may thus be provided by specifying a margin in k_{eff} (Δk_m), or specifying conservative modeling practices (Δk_{sa}), or some combination thereof. This principle will be particularly useful to the reviewer evaluating a proposed reduction in the currently approved MMS; the review of such a reduction should prove straightforward in cases in which the overall combination of modeling

conservatism and MMS has not changed. Because of this straightforward quantitative relationship, any modeling conservatism that has not been previously credited should be considered before examining other factors. Cases in which the overall MoS has decreased may still be acceptable, but would have to be justified by other means.

In evaluating justification for the MMS relying on conservatism in the model, the reviewer should consider only that conservatism in excess of any manufacturing tolerances, uncertainties in system parameters, or credible process variations. That is, the conservatism should consist of conservatism beyond the worst-case normal or abnormal conditions, as appropriate, including allowance for any tolerances. Examples of this added conservatism may include assuming optimum concentration in solution processes, neglecting neutron absorbers in structural materials, or requiring minimum reflector conditions (e.g., at least a 1-inch, tight-fitting reflector around process equipment). These technical practices used to perform criticality calculations generally result in conservatism of at least several percent in k_{eff}. To credit this as part of the justification for the MMS, the reviewer should have assurance that the modeling practices described will result in a predictable and dependable amount of conservatism in keff. In some cases, the conservatism may be process-dependent, in which case it may be relied on as justification for the MMS for a particular process. However, only modeling practices that result in a global conservatism across the entire facility should be relied on as justification for a site-wide MMS. Ensuring predictable and dependable conservatism includes verifying that this conservatism will be maintained over the facility lifetime, such as through the use of license commitments or conditions.

If the licensee has a program that establishes operating limits (to ensure that subcritical limits are not exceeded) below subcritical limits determined in nuclear criticality safety evaluations, the margin provided by this (optional) practice may be credited as part of the conservatism. In such cases, the reviewer should credit only the difference between operating and subcritical limits that exceeds any tolerances or process variation, and should ensure that operating limits will be maintained over the facility lifetime, through the use of license commitments or conditions.

Some questions that the reviewer may ask in evaluating the use of modeling conservatism as justification for the MMS include:

- How much margin in k_{eff} is provided due to conservatism in modeling practices?
- How much of this margin exceeds allowance for tolerances and process variations?
- Is this margin specific to a particular process or does it apply to all facility processes?
- What provides assurance that this margin will be maintained over the facility lifetime?

(2) Validation Methodology and Results

Assurance of subcriticality for methods that rely on the calculation of k_{eff} requires that those methods be appropriately validated. One of the goals of validation is to determine the method's bias and the uncertainty in the bias. After this has been done, an additional margin (MMS) is specified to account for any additional uncertainties that may exist. The appropriate MMS depends, in part, on the degree of confidence in the validation results. Having a high degree of confidence in the bias and bias uncertainty requires both that there be sufficient (for the statistical method used) applicable benchmark-quality experiments and that there be a rigorous validation methodology. If either the data or the methodology is deficient, a high degree of confidence in the results cannot be attained, and a larger MMS may need to be employed than would otherwise be acceptable. Therefore, although validation and determining the MMS are separate exercises, they are related. The more confidence one has in the validation results, the less additional margin (MMS) is needed. The less confidence one has in the validation results, the more MMS is needed.

Any review of a licensing action involving the MMS should involve examination of the licensee's validation methodology and results. While there is no clear quantifiable relationship between the validation and MMS (as exists with modeling conservatism), several aspects of validation should be considered before making a qualitative determination of the adequacy of the MMS.

There are four factors that the reviewer should consider in evaluating the validation: (1) The similarity of benchmark experiments to actual applications; (2) sufficiency of the data (including the number and quality of experiments); (3) adequacy of the validation methodology; and (4) conservatism in the calculation of the bias and its uncertainty. These factors are discussed in more detail below.

Similarity of Benchmark Experiments

Because the bias and its uncertainty must be estimated based on critical experiments having similar geometric form, material composition, and neutronic behavior to specific applications, the degree of similarity between the critical experiments and applications is a key consideration in determining the appropriateness of the MMS. The more closely critical experiments represent the characteristics of applications being validated, the more confidence the reviewer has in the estimate of the bias and the bias uncertainty for those applications.

The reviewer must understand both the critical experiments and applications in sufficient detail to ascertain the degree of similarity between them. Validation reports generally contain a description of critical experiments (including source references). The reviewer may need to consult these references to understand the physical characteristics of the experiments. In addition, the reviewer may need to consult process descriptions, nuclear criticality safety evaluations, drawings, tables, input files, or other information to understand the physical characteristics of applications. The reviewer must consider the full spectrum of normal and abnormal conditions that may have to be modeled when evaluating the similarity of the benchmarks to applications.

In evaluating the similarity of experiments to applications, the reviewer must recognize that some parameters are more significant than others to accurately calculate k_{eff}. The parameters that have the greatest effect on the calculated k_{eff} of the system are those that are most important to match when choosing critical experiments. Because of this, there is a close relationship between similarity of benchmarks to applications and system sensitivity. Historically, certain parameters have been used to trend the bias because these are the parameters that have been found to have the greatest effect on the bias. These parameters include the moderator-to-fuel ratio (e.g., H/U, H/X, v^m/v^f), isotopic abundance (e.g., uranium-235 (^{235}U), plutonium-239 (^{239}Pu), or overall Pu-to-uranium ratio), and parameters that characterize the neutron energy spectrum (e.g., energy of average lethargy causing fission (EALF), average energy group (AEG)). Other parameters, such as material density or overall

geometric shape, are generally considered to be of less importance. The reviewer should consider all important system characteristics that can reasonably be supposed to affect the bias. For example, the critical experiments should include any materials that can have an appreciable effect on the calculated k_{eff}, so that the effect due to the cross sections of those materials is included in the bias. Furthermore, these materials should have at least the same reactivity worth in the experiments (which may be evidenced by having similar number densities) as in the applications. Otherwise, the effect of any bias from the underlying cross sections or the assumed material composition may be masked in the applications. It is also important that the materials be present in a statistically significant number of experiments having similar neutron spectra to the application. Conversely, materials that do not have an appreciable effect on the bias may be neglected and would not have to be represented in the critical experiments.

Merely having critical experiments that are representative of applications is the minimum acceptance criterion, and does not alone justify having any particular value of the MMS. There are some situations, however, in which there is an unusually high degree of similarity between the critical experiments and applications, and in these cases, this fact may be credited as justification for having a smaller MMS than would otherwise be acceptable. If the critical experiments have geometric forms, material compositions, and neutron spectra that are nearly indistinguishable from those of the applications, this may be justification for reducing the MMS. For example, justification for having a small MMS for finished fuel assemblies could include selecting critical experiments consisting of fuel assemblies in water, where the fuel has nearly the same pellet diameter, pellet density, cladding materials, pitch, absorber content, enrichment, and neutron energy spectrum as the licensee's fuel. In this case, the validation should be very specific to this type of system, because including other types of benchmark experiments could mask variations in the bias. Therefore, this type of justification is generally easiest when the area of applicability (AOA) is very narrowly defined. The reviewer should pay particular attention to abnormal conditions. In this example, damage to the fuel or partial flooding may significantly affect the applicability of the critical experiments.

There are several tools available to the reviewer to ascertain the degree of similarity between critical experiments and applications. Some of these are listed below:

1. NUREG/CR–6698, ''Guide to Validation of Nuclear Criticality Safety Calculational Method,'' Table 2.3, contains a set of screening criteria for determining benchmark applicability. As is stated in the NUREG, these criteria were arrived at by consensus among experienced nuclear criticality safety specialists and may be considered to be conservative. The reviewer should consider agreement on all screening criteria to be justification for demonstrating a very high degree of benchmark similarity. (Agreement on the most significant screening criteria for a particular system should be considered as demonstration of an acceptable degree of benchmark similarity.) Less conservative (i.e., broader) screening criteria may also be acceptable, if appropriately justified.

2. Analytical methods that systematically quantify the degree of similarity between a set of critical experiments and applications in pair-wise fashion may be used. One example of this is the TSUNAMI code in the SCALE 5 code package. One strength of TSUNAMI is that it calculates an overall correlation that is a quantitative measure of the degree of similarity between an experiment and an application. Another strength is that this code considers all the nuclear phenomena and underlying cross sections and weighs them by their importance to the calculated k_{eff} (i.e., sensitivity of k_{eff} to the data). The NRC staff currently considers a correlation coefficient of $c_k \geq 0.95$ to be indicative of a very high degree of similarity. This is based on the staff's experience comparing the results from TSUNAMI to those from a more traditional screening criterion approach. Conversely, a correlation coefficient less than 0.90 should not be used as a demonstration of a high degree of benchmark similarity. Because of limited use of the code to date, these observations should be considered tentative and thus the reviewer should not use TSUNAMI as a ''black box,'' or base conclusions of adequacy solely on its use. However, it may be used to test a licensee's statement that there is a high degree of similarity between experiments and applications.

3. Traditional parametric sensitivity studies may be employed to demonstrate that k_{eff} is highly sensitive or insensitive to a particular parameter. For example, if a 50% reduction in the ^{10}B cross section is needed to produce a 1% change in the system k_{eff}, then it can be concluded that the system is highly insensitive to the boron content, in the amount present. This is because a credible error in the ^{10}B cross section of a few percent will have a statistically insignificant effect on the bias. Therefore, in the amount present, the boron content is not a parameter that is important to match in order to conclude that there is a high degree of similarity between benchmarks and applications.

4. Physical arguments may demonstrate that k_{eff} is highly sensitive or insensitive to a particular parameter. For example, the fact that oxygen and fluorine are almost transparent to thermal neutrons (i.e., cross sections are very low) may justify why experiments consisting of UO_2F_2 may be considered similar to UO_2 or UF_4 applications, provided that both experiments and applications occur in the thermal energy range.

The reviewer should ensure that all parameters which can measurably affect the bias are considered when assessing benchmark similarity. For example, comparison should not be based solely on agreement in the ^{235}U fission spectrum for systems in which the system k_{eff} is highly sensitive to ^{238}U fission, ^{10}B absorption, or ^{1}H scattering. A method such as TSUNAMI that considers the complete set of reactions and nuclides present can be used to rank the various system sensitivities, and to thus determine whether it is reasonable to rely on the fission spectrum alone in assessing the similarity of benchmarks to applications.

Some questions that the reviewer may ask in evaluating reliance on benchmark similarity as justification for the MMS include:

- Do the benchmarks cover all geometric forms, material compositions, and neutron energy spectra expected in applications?
- Are the materials present with at least the same reactivity worth as in applications?
- Do the licensee's criteria for determining whether experiments are sufficiently similar to applications consider all nuclear reactions and nuclides that could affect the bias?

Sufficiency of the Data

Another aspect of evaluating the selected benchmarks for a specific MMS is ensuring that there is a sufficient number of benchmark quality experiments to determine the bias across the entire AOA. Having a sufficient number of benchmark-quality experiments means that: (1) There are enough (applicable) experiments to make a statistically meaningful calculation of the bias and its uncertainty; (2) the experiments somewhat evenly span the entire range of all the important parameters, without gaps requiring extrapolation or wide interpolation; and (3) the experiments are all benchmark-quality experiments. The number of benchmarks needed is dependent on the statistical method used to analyze the data. For example, some methods require a minimum number of data points to reliably determine whether the data are normally distributed. Merely having a large number of experiments is not

sufficient to provide confidence in the validation result, if the experiments are not applicable to the application. The reviewer should particularly examine whether consideration of only the most applicable experiments would result in a larger negative bias (and thus a lower USL) than that determined based on the full set of experiments. The experiments should also be sufficiently well-characterized (including experimental parameters and their uncertainties) to be considered benchmark experiments. They should be drawn from established sources (such as from the International Handbook of Evaluated Criticality Safety Benchmark Experiments (IHECSBE), laboratory reports, or peer-reviewed journals).

Some questions that the reviewer may ask in evaluating the number and quality of benchmark experiments as justification for the MMS include:

- Are the critical experiments chosen all high-quality benchmarks from reliable (e.g., peer-reviewed and widely-accepted) sources?
- Are the critical experiments chosen taken from multiple independent sources, to minimize the possibility of systematic errors?
- Have the experimental uncertainties associated with the critical experiments been provided and used in calculating the bias and bias uncertainty?
- Is the number and distribution of critical experiments sufficient to establish trends in the bias across the entire range of parameters?
- Is the number of critical experiments commensurate with the statistical methodology being used?

Validation Methodological Rigor

Having a sufficiently rigorous validation methodology means having a methodology that is appropriate for the number and distribution of critical experiments, that calculates the bias and its uncertainty using an established statistical methodology, that accounts for any trends in the bias, and that accounts for all apparent sources of uncertainty in the bias (e.g., the increase in uncertainty due to extrapolating the bias beyond the range covered by the benchmark data.) Examples of deficiencies in the validation methodology may include: (1) Using a statistical methodology relying on the data being normally distributed about the mean k_{eff} to analyze data that are not normally distributed; (2) using a linear regression fit on data that has a non-linear dependence on a trending parameter; (3) use of a single pooled bias when very different types of critical experiments are being evaluated in the same validation. These deficiencies serve to decrease confidence in the validation results and may warrant additional margin (i.e., a larger MMS). Additional guidance on some of the more commonly observed deficiencies is provided below.

The assumption that data is normally distributed is generally valid, unless there is a strong trend in the data or different types of critical experiments with different mean calculated k_{eff} values are being combined. Tests for normality require a minimum number of critical experiments to attain a specified confidence level (generally 95%). If there is insufficient data to verify that the data are normally distributed, or the data are shown to be not normally distributed, a non-parametric technique should be used to analyze the data.

The critical experiments chosen should provide a continuum of data across the entire validated range, so that any variation in the bias as a function of important system parameters may be observed. The presence of discrete clusters of experiments having a lower calculated k_{eff} than the set of critical experiments as a whole should be examined closely, to determine if there is some systematic effect common to a particular type of calculation that makes use of the overall bias non-conservative. Because the bias can vary with system parameters, if the licensee has combined different subsets of data (e.g., solutions and powders, low- and high-enriched, homogeneous and heterogeneous), the bias for the different subsets should be analyzed. In addition, the goodness-of-fit for any function used to trend the bias should be examined to ensure it is appropriate to the data being analyzed.

If critical experiments do not cover the entire range of parameters needed to cover anticipated applications, it may be necessary to extend the AOA by making use of trends in the bias. Any extrapolation (or wide interpolation) of the data should be done by means of an established mathematical methodology that takes into account the functional form of both the bias and its uncertainty. The extrapolation should not be based on judgement alone, such as by observing that the bias is increasing in the extrapolated range, because this may not account for the increase in the bias uncertainty that will occur with increasing extrapolation. The reviewer should independently confirm that the derived bias is still valid in the extrapolated range and should ensure that the extrapolation is not large. NUREG/CR–6698 states that critical experiments should be added if the data must be extrapolated more than 10%. If the extrapolation is too large, new factors that could affect the bias may be introduced as the physical phenomena in the system change. The reviewer should not view validation as a purely mathematical exercise, but should bear in mind the neutron physics and underlying physical phenomena when interpreting the results.

Discarding an unusually large number of critical experiments as outliers (i.e., more than 1–2%) should also be viewed with some concern. Apparent outliers should not be discarded based purely upon judgement or statistical grounds (such as causing the data to fail tests for normality), because they could be providing valuable information on the method's validity for a particular application. The reviewer should verify that there are specific defensible reasons, such as reported inconsistencies in the experimental data, for discarding any outliers. If any of the critical experiments from a particular data set are discarded, the reviewer should examine other experiments included to determine whether they may be subject to the same systematic errors. Outliers should be examined carefully especially when they have a lower calculated k_{eff} than the other experiments included.

NUREG–1520 states that the MoS should be large compared to the uncertainty in the bias. The observed spread of the data about the mean k_{eff} should be examined as an indicator of the overall precision of the calculational method. The reviewer should ascertain whether the statistical method of validation considers both the observed spread in the data and the experimental and calculational uncertainty in determining the USL. The reviewer should also evaluate whether the observed spread in the data is consistent with the reported uncertainty (e.g., whether $\chi^2/N \approx 1$). If the spread in the data is larger than or comparable to the MMS, then the reviewer should consider whether additional margin (i.e., a larger MMS) is needed.

As a final test of the code's accuracy, the bias should be relatively small (i.e., bias ≈ 2 percent), or else the reason for the bias should be determined. No credit should be taken for positive bias, because this would result in making changes in a non-conservative direction without having a clear understanding of those changes. If the absolute value of the bias is very large—and especially if the reason for the large bias cannot be determined—this may indicate that the calculational method is not very accurate, and a larger MMS may be appropriate.

Some questions that the reviewer may ask in evaluating the rigor of the

validation methodology as justification for the MMS include:

- Are the results from use of the methodology consistent with the data (e.g., normally distributed)?
- Is the normality of the data confirmed prior to performing statistical calculations? If the data does not pass the tests for normality, is a non-parametric method used?
- Does the assumed functional form of the bias represent a good fit to the critical experiments? Is a goodness-of-fit test performed?
- Does the method determine a pooled bias across disparate types of critical experiments, or does it consider variations in the bias for different types of experiments? Are there discrete clusters of experiments for which the bias appears to be non-conservative?
- Has additional margin been applied to account for extrapolation or wide interpolation? Is this done based on an established mathematical methodology?
- Have critical experiments been discarded as apparent outliers? Is there a valid reason for doing so?

Performing an adequate code validation is not by itself sufficient justification for any specific MMS. The reason for this is that the validation analysis determines the bias and its uncertainty, but not the MMS. The MMS is added after the validation has been performed to provide added assurance of subcriticality. However, having a validation methodology that either exceeds or falls short of accepted standards for validation may be a basis for either reducing or increasing the MMS.

Statistical Conservatism

In addition to having conservatism in k_{eff} due to modeling practices, licensees may also provide conservatism in the statistical methods used to calculate the USL. For example, NUREG/CR–6698 states that an acceptable method for calculating the bias is to use the single-sided tolerance limit approach with a 95/95 confidence (i.e., 95% confidence that 95% of all future critical calculations will lie above the USL). If the licensee decides to use the single-sided tolerance limit approach with a 95/99.9 confidence, this would result in a more conservative USL than with a 95/95 confidence. This would be true of other methods for which the licensee's confidence criteria exceeds the minimum accepted criteria. Generally, the NRC has accepted 95% confidence levels for validation results, so using more stringent confidence levels may provide conservatism. In addition, there may be other reasons a larger bias and/or bias uncertainty than necessary has been used (e.g., because of the inclusion of inapplicable benchmark experiments that have a lower calculated k_{eff}).

The reviewer may credit this conservatism towards having an adequate MoS if: (1) The licensee demonstrates that this translates into a specific Δk_{eff}; and (2) the licensee demonstrates that the margin will be dependably present, based on license or other commitments.

(3) Additional Risk-Informed Considerations

Besides modeling conservatism and the validation results, other factors may provide added assurance of subcriticality. These factors should be considered in evaluating whether there is adequate MoS and are discussed below.

System Sensitivity and Uncertainty

The sensitivity of k_{eff} to changes in system parameters can be used to assess the potential effect of errors on the calculation of k_{eff}. If the calculated k_{eff} is especially sensitive to a given parameter, an error in that parameter could have a correspondingly large contribution to the bias. Conversely, if k_{eff} is very insensitive to a given parameter, then an error may have a negligible effect on the bias. This is of particular importance when assessing whether the chosen critical experiments are sufficiently similar to applications to justify a small MMS.

The reviewer should not consider the sensitivity in isolation, but should also consider the magnitude of uncertainties in the parameters. If k_{eff} is very sensitive to a given parameter, but the value of that parameter is known with very high accuracy (and its variations are well-controlled), the potential contribution to the bias may still be very small. Thus, the contribution to the bias is a function of the product of the k_{eff} sensitivity with the uncertainty. To illustrate this, suppose that k_{eff} is a function of a large number of variables, $x_1, x_2, \ldots, x_N$. Then the uncertainty in k_{eff} may be expressed as follows, if all the individual terms are independent:

$$\delta k^2 = \sum_{i=1}^{N} \left(\frac{\partial k}{\partial x_i} \right)^2 \delta x_i^2$$

where the partial derivatives $\partial k/\partial x_i$ are proportional to the sensitivity and the terms δ_i represent the uncertainties, or likely variations, in the parameters. Each term in this equation then represents the contribution to the overall uncertainty in k_{eff}.

There are several tools available to the reviewer to ascertain the sensitivity of k_{eff} to changes in the underlying parameters. Some of these are listed below:

1. Analytical tools that calculate the sensitivity for each nuclide-reaction pair present in the problem may be used. One example of this is the TSUNAMI code in the SCALE 5 code package. TSUNAMI calculates both an integral sensitivity coefficient (i.e., summed over all energy groups) and a sensitivity profile as a function of energy group. The reviewer should recognize that TSUNAMI only calculates the k_{eff} sensitivity to changes in the underlying nuclear data, and not to other parameters that could affect the bias and should be considered. (See section on Benchmark Similarity for caveats about using TSUNAMI.)

2. Direct sensitivity calculations may be used, in which system parameters are perturbed and the resulting impact on k_{eff} determined. Perturbation of atomic number densities can also be used to confirm the sensitivity calculated by other methods (e.g., TSUNAMI). Such techniques are not limited to considering the effect of the nuclear data.

There are also several sources available to the reviewer to ascertain the uncertainty associated with the underlying parameters. For process parameters, these sources of uncertainty may include manufacturing tolerances, quality assurance records, and experimental and/or measurement results. For nuclear data parameters, these sources of uncertainty may include published data, uncertainty data distributed with the cross section libraries, or the covariance data used in methods such as TSUNAMI.

Some systems are inherently more sensitive to changes in the underlying parameters than others. For example, high-enriched uranium systems typically exhibit a greater sensitivity to changes in system parameters (e.g., mass, moderation) than low-enriched systems. This has been the reason that HEU (i.e., >20wt% $_{235}U$) facilities have been licensed with larger MMS values than LEU (≤10wt% $_{235}U$) facilities. This greater sensitivity would also be true of weapons-grade Pu compared to low-assay mixed oxides (i.e., with a few percent Pu/U). However, it is also true that the uncertainties associated with measurement of the $_{235}U$ cross sections are much smaller than those associated with measurement of the $_{238}U$ cross sections. Both the greater sensitivity and smaller uncertainty would need to be considered in evaluating whether a larger MMS is needed for high-enriched systems.

Frequently, operating limits that are more conservative than safety limits determined using k_{eff} calculations are established to prevent those safety limits from being exceeded. For systems in which k_{eff} is very sensitive to the system parameters, more margin between the operating and safety limits may be needed. Systems in which k_{eff} is very sensitive to the process parameters may need both a larger margin between operating and safety limits and a larger MMS. This is because the system is sensitive to any change, whether it be caused by normal process variations or caused by unknown errors. Because of this, the assumption is often made that the MMS is meant to account for variations in the process or the ability to control the process parameters. However, the MMS is meant only to allow for unknown (or difficult to quantify) uncertainties in the calculation of k_{eff}. The reviewer should recognize that determination of an appropriate MMS is not dependent on the ability to control process parameters within safety limits (although both may depend on the system sensitivity).

Some questions that the reviewer may ask in evaluating the system sensitivity as justification for the MMS include:

- How sensitive is k_{eff} to changes in the underlying nuclear data (e.g., cross sections)?
- How sensitive is k_{eff} to changes in the geometric form and material composition?
- Are the uncertainties associated with these underlying parameters well-known?
- How does the MMS compare to the expected magnitude of changes in k_{eff} resulting from uncertainties in these underlying parameters?

Knowledge of the Neutron Physics

Another important consideration that may affect the appropriate MMS is the extent to which the physical behavior of the system is known. Fissile systems which are known to be subcritical with a high degree of confidence do not require as much MMS as systems where subcriticality is less certain. An example of a system known to be subcritical with high confidence is a light-water reactor fuel assembly. The design of these systems is such that they can only be made critical when highly thermalized. Due to extensive analysis and reactor experience, the flooded isolated assembly is known to be subcritical. In addition, the thermal neutron cross sections for materials in finished reactor fuel have been measured with a very high degree of accuracy (as opposed to cross sections in the resonance region). Other examples of systems in which there is independent corroborating evidence of subcriticality may include systems consisting of very simple geometric shapes, or other idealized situations, in which there is strong evidence that the system is subcritical based on comparison with highly similar systems in published sources (e.g., standards and handbooks). In these cases, the MMS may be significantly reduced due to the fact that the calculation of k_{eff} is not relied on alone to provide assurance of subcriticality.

Reliance on independent knowledge that a given system is subcritical necessarily requires that the configuration of the system be fixed. If the configuration can change from the reference case, there will be less knowledge about the behavior of the changed system. For example, a finished fuel assembly is subject to strict quality assurance checks and would not reach final processing if it were outside of specifications. In addition, it has a form that has both been extensively studied and is highly stable. For these reasons, there is a great deal of certainty that this system is well-characterized and is not subject to change. A typical solution or powder system (other than one with a simple geometric arrangement) would not have been studied with the same level of rigor as a finished fuel assembly. Even if they were studied with the same level of rigor, these systems have forms that are subject to change into forms whose neutron physics has not been as extensively studied.

Some questions that the reviewer may ask in evaluating the knowledge of the neutron physics as justification for the MMS include:

- Is the geometric form and material composition of the system rigid and unchanging?
- Is the geometric form and material composition of the system subject to strict quality assurance, such that tolerances have been bounded?
- Has the system been extensively studied in the nuclear industry and shown to be subcritical (e.g., in reactor fuel studies)?
- Are there other reasons besides criticality calculations to conclude that the system will be subcritical (e.g., handbooks, standards, published data)?
- How well-known is the nuclear data (e.g., cross sections) in the energy range of interest?

Likelihood of the Abnormal Condition

Some facilities been licensed with different sets of k_{eff} limits for normal and abnormal conditions. Separate k_{eff} limits for normal and abnormal conditions are permissible but are not required. There is some likelihood that processes calculated to be subcritical will in fact be critical, and this likelihood increases as the MMS is reduced (though it cannot in general be quantified). NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' states that abnormal conditions should be at least unlikely from the standpoint of the double contingency principle. Then, a somewhat higher likelihood that a system calculated to be subcritical is in fact critical is more permissible for abnormal conditions than for normal conditions, because of the low likelihood of the abnormal condition being realized. The reviewer should verify that the licensee has defined abnormal conditions such that achieving the abnormal condition requires at least one contingency to have occurred, that the system will be closely monitored so that it is promptly detected, and that it will be promptly corrected upon detection. It is also true that there is generally more conservatism present in the abnormal case, because the parameters that are assumed to have failed are analyzed at their worst-case credible condition.

The increased risk associated with having a smaller MMS for abnormal conditions should be commensurate with and offset by the low likelihood of achieving the abnormal condition. That is, if the normal case k_{eff} limit is judged to be acceptable, then the abnormal case limit will also be acceptable, provided the increased likelihood (that a system calculated to be subcritical will be critical) is offset by the reduced likelihood of realizing the abnormal condition because of the controls that have been established. Note that if two or more contingencies must occur to reach a given condition, there is no requirement to ensure that the resulting condition is subcritical. If a single k_{eff} limit is used (*i.e.*, no credit for unlikelihood of the abnormal condition), then the limit must be found acceptable to cover both normal and credible abnormal conditions. The reviewer should always make this finding considering specific conditions and controls in the process(es) being evaluated.

(4) Statistical Justification for the MMS

The NRC does not consider statistical justification an appropriate basis for a specific MMS. Previously, some licensees have attempted to justify specific MMS values based on a comparison of two statistical methods. For example, the USLSTATS code issued with the SCALE code package

contains two methods for calculating the USL: (1) the Confidence Band with Administrative Margin approach (calculating USL–1), and (2) the Lower Tolerance Band approach (calculating USL–2). The value of the MMS is an input parameter to the Confidence Band approach, but is not included explicitly in the Lower Tolerance Band approach. In this particular justification, adequacy of the MMS is based on a comparison of USL–1 and USL–2 (*i.e.*, the condition that USL–1, including the chosen MMS, is less than USL–2). However, the reviewer should not accept this justification.

The condition that USL–1 (with the chosen MMS) is less than USL–2 is necessary, but is not sufficient, to show that an adequate MMS has been used. These methods are both statistical methods, and a comparison can only demonstrate whether the MMS is sufficient to bound any statistical uncertainties included in the Lower Tolerance Band approach but not included in the Confidence Band approach. There may be other statistical or systematic errors in calculating k_{eff} that are not included in either statistical treatment. Because of this, an MMS value should be specified regardless of the statistical method used. Therefore, the reviewer should not consider such a statistical approach an acceptable justification for any specific value of the MMS.

(5) Summary

Based on a review of the licensee's justification for its chosen MMS, taking into consideration the aforementioned factors, the staff should make a determination as to whether the chosen MMS provides reasonable assurance of subcriticality under normal and credible abnormal conditions. The staff's review should be risk-informed, in that the review should be commensurate with the MoS and should consider the specific facility and process characteristics, as well as the specific modeling practices used. As an example, approving an MMS value greater than 0.05 for processes typically encountered in enrichment and fuel fabrication facilities should require only a cursory review, provided that an acceptable validation has been performed and modeling practices at least as conservative as those in NUREG–1520 have been utilized. The approval of a smaller MMS will require a somewhat more detailed review, commensurate with the MMS that is requested. However, the MMS should not be reduced below 0.02 due to inherent uncertainties in the cross section data and the magnitude of code errors that have been discovered. Quantitative arguments (such as modeling conservatism) should be used to the extent practical. However, in many instances, the reviewer will need to make a judgement based at least partly on qualitative arguments. The staff should document the basis for finding the chosen MMS value to be acceptable or unacceptable in the SER, and should ensure that any factors upon which this determination rests are ensured to be present over the facility lifetime (*e.g.*, through license commitment or condition).

Regulatory Basis

In addition to complying with paragraphs (b) and (c) of this section, the risk of nuclear criticality accidents must be limited by assuring that under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety. [10 CFR 70.61(d)]

Technical Review Guidance

Determination of an adequate MMS is strongly dependent upon specific processes, conditions, and calculational practices at the facility being licensed. Judgement and experience must be employed in evaluating the adequacy of the proposed MMS. In the past, an MMS of 0.05 has generally been found acceptable for most typical low-enriched fuel cycle facilities without a detailed technical justification. A smaller MMS may be acceptable but will require some level of technical review. However, for reasons stated previously, the MMS should not be reduced below 0.02.

An MMS of 0.05 should be found acceptable for low-enriched fuel cycle processes and facilities if:

1. A validation has been performed that meets accepted industry guidelines (*e.g.*, meets the requirements of ANSI/ANS–8.1–1998, NUREG/CR–6361, and/or NUREG/CR–6698).

2. There is an acceptable number of benchmark experiments with similar geometric forms, material compositions, and neutron energy spectra to applications. These experiments cover the range of parameters of applications, or else margin is provided to account for extensions to the AOA.

3. The processes to be evaluated include materials and process conditions similar to those that occur in low-enriched fuel cycle applications (i.e., no new fissile materials, unusual moderators or absorbers, or technologies new to the industry that can affect the types of systems to be modeled).

The reviewer should consider any factors, including those enumerated in the discussion above, that could result in applying additional margin (*i.e.*, a larger MMS) or may justify reducing the MMS. The reviewer must then exercise judgement in arriving at an MMS that provides for adequate assurance of subcriticality.

Some of the factors that may serve to justify reducing the MMS include:

1. There is a predictable and dependable amount of conservatism in modeling practices, in terms of k_{eff}, that is assured to be maintained (in both normal and abnormal conditions) over the facility lifetime.

2. Benchmark experiments have nearly identical geometric forms, material compositions, and neutron energy spectra to applications, and the validation is specific to this type of application.

3. The validation methodology substantially exceeds accepted industry guidelines (*e.g.*, it uses a very conservative statistical approach, considers an unusually large number of trending parameters, or analyzes the bias for a large number of subgroups of critical experiments).

4. The system k_{eff} is demonstrably much less sensitive to uncertainties in cross sections or variations in other system parameters than typical low-enriched fuel cycle processes.

5. There is reliable information besides results of calculations that provides assurance that the evaluated applications will be subcritical (*e.g.*, experimental data, historical evidence, industry standards or widely-accepted handbooks).

6. The MMS is only applied to abnormal conditions, which are at least unlikely to be achieved, based on credited controls.

Some of the factors that may necessitate increasing (or not approving) the MMS include:

1. The technical practices employed by the licensee are less conservative than standard industry modeling practices (*e.g.*, do not adequately bound reflection or the full range of credible moderation, do not take geometric tolerances into account).

2. There are few similar critical experiments of benchmark quality that cover the range of parameters of applications.

3. The validation methodology substantially falls below accepted industry guidelines (e.g., it uses less than a 95% confidence in the statistical approach, fails to consider trends in the bias, fails to account for extensions to the AOA).

4. The validation results otherwise tend to cast doubt on the accuracy of the bias and its uncertainty (i.e., the critical experiments are not normally distributed, there is a large number of outliers discarded (≥2%), there are distinct subgroups of experiments with lower k_{eff} than the experiments as a whole, trending fits do not pass goodness-of-fit tests, etc.).

5. The system k_{eff} is demonstrably much more sensitive to uncertainties in cross sections or other system parameters than typical low-enriched fuel cycle processes.

6. There is reliable information that casts doubt on the results of the calculational method or the subcriticality of evaluated applications (e.g., experimental data, reported concerns with the nuclear data).

The purpose of asking the questions in the individual discussion sections is to ascertain the degree to which these factors either provide justification for reducing the MMS or necessitate increasing the MMS. These lists are not all-inclusive, and any other technical information that demonstrates the degree of confidence in the calculational method should be considered.

Recommendation

The guidance in this ISG should supplement the current guidance in the nuclear criticality safety chapters of the fuel facility SRPs (NUREG–1520 and –1718). However, NUREG–1718, Section 6.4.3.3.4, states that the licensee should submit justification for the MMS, but then states that an MMS of 0.05 is ''generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible.'' These two statements are inconsistent. Therefore, NUREG–1718, Section 6.4.3.3.4, should be revised to remove the following sentence:

''A minimum subcritical margin of 0.05 is generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible.''

References

ANSI/ANS–8.1–1998, ''Nuclear Criticality Safety in Operations with Fissionable Materials Outside Reactors,'' American Nuclear Society.

ANSI/ANS–8.17–1984 (R1997), ''Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR [Light Water Reactor] Fuel Outside Reactors,'' American Nuclear Society.

IN 2005–13, ''Potential Non-Conservative Error in Modeling Geometric Regions in the KENO–V.a Criticality Code,'' May 17, 2005.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility.'' NRC: Washington, DC March 2002.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility.'' NRC: Washington, DC August 2000.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG/CR–6698, ''Guide for Validation of Nuclear Criticality Safety Calculational Methodology.'' NRC: Washington, DC January 2001.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG/CR–6361, ''Criticality Benchmark Guide for Light-Water-Reactor Fuel in Transportation and Storage Packages.'' NRC: Washington, DC March 1997.

Approved: _____ Date: ____
Director, Division of Fuel Cycle Safety and Safeguards, NMSS

Appendix A—ANSI/ANS–8.17 Calculation of Maximum k_{eff}

ANSI/ANS–8.17–1984 (R1997), ''Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors,'' contains a detailed discussion of the various factors that should be considered in setting k_{eff} limits. This is consistent with, but more detailed than, the discussion in ANSI/ANS–8.1–1998.

The subcriticality criterion from Section 5.1 of ANSI/ANS–8.17–1984 (R1997) is:

$$k_s \leq k_c - \Delta k_s - \Delta k_c - \Delta k_m$$

where k_s is the calculated k_{eff} corresponding to the application, Δk_s is its uncertainty, k_c is the mean k_{eff} resulting from the calculation of critical experiments, Δk_c is its uncertainty, and Δk_m is the MMS. The types of uncertainties included in each of these ''delta'' terms is provided, and includes the following:

Δk_s = (1) Statistical uncertainties in computing k_s; (2) convergence uncertainties in computing k_s, (3) material tolerances; (4) fabrication tolerances; (5) uncertainties due to limitations in the geometric representation used in the method; and (6) uncertainties due to limitations in the material representations used in the method.

Δk_c = (7) uncertainties in the critical experiments; (8) statistical uncertainties in computing k_c; (9) convergence uncertainties in computing k_c; (10) uncertainties due to extrapolating k_c outside the range of experimental data; (11) uncertainties due to limitations in the geometric representations used in the method; and (12) uncertainties due to limitations in the material representations used in the method.

Δk_m = an allowance for any additional uncertainties (MMS).

To the extent that not all 12 sources of uncertainty listed above have been explicitly taken into account, they may be allowed for by increasing the value of Δk_m. The more of these sources of uncertainty that have been taken into account, the smaller the necessary additional margin Δk_m. As a general principle, however, the MMS should be large compared to known uncertainties in the nuclear data and limitations of the methodology. However, a value of the MMS below 0.02 should not be used.

Frequently, the terms in the above equation relating to the application are grouped on the left-hand side of the equation, so that the equation is rewritten as follows:

$$k_s + \Delta k_s \leq k_c - \Delta k_c - \Delta k_m$$

where the terms on the right-hand side of the equation are often lumped together and termed the Upper Subcritical Limit (USL), so that the USL = $k_c - \Delta k_c - \Delta k_m$.

Relation to the Minimum Subcritical Margin (MMS)

The MoS has been defined as the difference between the actual value of k_{eff} and the value of k_{eff} at which the system is expected to be critical. The expected (best estimate) critical value of k_{eff} is the mean k_{eff} value of all critical experiments analyzed (bias), including consideration of the uncertainty in the bias (*i.e.*, $k_c - \Delta k_c$). The calculated value of k_{eff} for an application generally exceeds the actual (physical) k_{eff} value due to conservative assumptions in modeling the system. In terms of the above USL equation, the MoS may be expressed mathematically as:

$$MoS = k_c - \Delta k_c - (k_s - \Delta k_{sa}) - \Delta k_s$$

where the term in parentheses is equal to the actual (physical) k_{eff} of the application, k_{sa}. A term, Δk_{sa}, has been added to represent the difference between the actual and calculated value of k_{eff} for the application (*i.e.*, Δk_{sa} = change in k_{eff} resulting from modeling conservatism). In terms of the USL:

$$MoS = USL + \Delta k_m - k_s + \Delta k_{sa} - \Delta k_s$$

The minimum allowed value of the MoS is reached when the calculated k_{eff} for the application, $k_s + \Delta k_s$, is equal to the USL. When this occurs, the minimum value of the MoS is:

$$MoS \geq \Delta k_m + \Delta k_{sa}$$

Thus, adequate margin (MoS) may be assured either by conservatism in modeling practices or in the explicit specification of Δk_m (MMS). This is discussed in the ISG section on modeling conservatism.

Glossary

Application: calculation of a fissionable system in the facility performed to demonstrate subcriticality under normal or credible abnormal conditions.

Area of applicability: the ranges of material compositions and geometric arrangements within which the bias of a calculational method is established.

Benchmark experiment: a critical experiment that has been peer-reviewed and published and is sufficiently well-defined to be used for validation of calculational methods.

Bias: a measure of the systematic differences between calculational method results and experimental data.

Bias uncertainty: a measure of both the accuracy and precision of the calculations and the uncertainty in the experimental data.

Calculational method: includes the hardware platform, operating system, computer algorithms and methods, nuclear reaction data, and methods used to construct computer models.

Critical experiment: a fissionable system that has been experimentally determined to be critical (with $k_{eff} \approx 1$).

Margin of safety: the difference between the actual value of a parameter and the value of the parameter at which the system is expected to be critical with critical defined as $k_{eff} = 1$ = bias = bias uncertainty.

Margin of subcriticality (MoS): the difference between the actual value of k_{eff} and the value of k_{eff} at which the system is expected to be critical with critical defined as $k_{eff} = 1$ = bias = bias uncertainty.

Minimum margin of subcriticality (MMS): a minimum allowed margin of subcriticality, which is an allowance for any unknown uncertainties in calculating k_{eff}.

Subcritical limit: the bounding value of a controlled parameter under normal case conditions.

Upper subcritical limit (USL): the maximum allowed value of k_{eff} (including uncertainty in k_{eff}), under both normal and credible abnormal conditions, including allowance for the bias, the bias uncertainty, and a minimum margin of subcriticality.

[FR Doc. 05–20785 Filed 10–17–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation BTR; OMB Control No. 3235–0579; SEC File No. 270–521.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation Blackout Trade Restriction (''Regulation BTR'') clarifies the scope and application of Section 306(a) of the Sarbanes-Oxley Act of 2002 (''Act''). Section 306(a)(6) of the Act requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that would trigger the statutory trading prohibition of Section 306(a)(1). Approximately 1,230 issuers file Regulation BTR notices annually. We estimate that it takes 2 hours per response for an issuer to draft a notice to directors and executive officers for a total annual burden of 2,460 hours. The issuer prepares 75% of the 2,460 annual burden hours for a total reporting burden of (1,230 × 2 × .75) 1,845 hours. In addition, we estimate that an issuer distributes a notice to five directors and executive officers at an estimated 5 minutes per notice (1,230 blackout period × 5 notices × 5 minutes) for a total reporting burden of 512 hours. The combined annual reporting burden is (1,845 hours + 512 hours) 2,357 hours.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: October 7, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5722 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation G; OMB Control No. 3235–0576; SEC File No. 270–518.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation G under the Securities Exchange Act of 1934 (the ''Exchange Act'') requires registrants that publicly disclose material information that includes a non-GAAP financial measure to provide a reconciliation to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002. We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately .5 hours per response (84,000 × .5 hours) for a total reporting burden of 42,000 hours annually.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: October 7, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5724 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–17; SEC File No. 270–427; OMB Control No. 3235–0476.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 10b–17, Untimely announcements of record dates (17 CFR 240.10b–17)

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be (1) given to the National Association of Securities Dealers, Inc.; (2) in accordance with the procedures of the national securities exchange upon which the securities are registered; or (3) may be waived by the Commission.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The consequence of not requiring the information collection pursuant to Rule 10b–17 is that sellers who have received distributions as recordholders may dispose of the cash or stock dividends or other rights received as recordholders without knowledge of possible claims of purchasers.

It is estimated that, on an annual basis, there are approximately 29,430 respondents and that each response takes about 10 minutes to complete, thus imposing approximately 4,905 burden hours annually (29,430 × 10 minutes). We believe that the average hourly cost to produce and file a response under the rule is about $50. Therefore, the annual reporting cost burden for complying with this rule is about $245,250 (4,905 × $50).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: October 7, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5725 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–5(c); SEC File No. 270–199; OMB Control No. 3235–0199.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–5(c) [17 CFR 240.17a–5(c)] under the Securities Exchange Act of 1934 requires certain broker-dealers who carry customer accounts to provide statements of the broker-dealer's financial condition to their customers. Paragraph (5) of Rule 17a–5(c) provides a conditional exemption from this requirement. It is estimated that approximately 375 broker-dealer respondents with approximately 109 million public customer accounts incur an average burden of 130,000 hours per year to comply with this rule.

Rule 17a–5(c) does not contain record retention requirements. Compliance with the rule is mandatory. Responses are not confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: October 7, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5727 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Form 10–SB; OMB Control No. 3235–0419; SEC File No. 270–367.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 10–SB is used to register classes of securities of small business issuers pursuant to Section 12 of the Securities Exchange Act of 1934 to provide material information necessary for

informed investment decisions. Every issuer subject to Sections 13(a) and 15(d) under the Exchange Act must file a periodic report with the Commission containing information about its business and financial condition. We estimate that Form 10–SB takes approximately 133 hours per response and is filed by 254 respondents. It is estimated that 25% of the 33,782 annual burden hours (8,446 burden hours) would be prepared by the company.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: October 7, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5729 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27116; 812–13116]

ING Partners, Inc., et al.; Notice of Application

October 12, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') exempting applicants from section 17(a) of the Act and under section 12(d)(1)(J) of the Act exempting applicants from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of the Application: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies or unit investment trusts that are within or outside the same group of investment companies as well as a guaranteed rate investment contract issued by an affiliated insurance company.

Applicants: ING Partners, Inc. (''IPI''), ING Investors Trust (''IIT''), ING Variable Insurance Trust (''IVIT''), ING Variable Products Trust (''IVPT''), ING VP Emerging Markets Fund, Inc. (''IVPEMF''), ING VP Natural Resources Trust (''IVPNRT'') (the ''ING Investment Companies''), ING Life Insurance and Annuity Company (''ILIAC''), ING Investments, LLC (''IIL'') and Directed Services, Inc. (the ''Advisers'').[1]

Filing Dates: The application was filed on August 13, 2004 and amended on April 7, 2005, and September 28, 2005. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 7, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–9303. Applicants, c/o Huey P. Falgout, Jr., Chief Counsel, ING Americas U.S. Legal Services, 7337 E. Doubletree Ranch Rd., Scottsdale, Arizona 85258.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F St., NE., Washington, DC 20549–0102 (tel. (202) 551–5850).

Applicants' Representations

1. IPI is a Maryland corporation and is registered under the Act as an open-end management investment company. IPI currently consists of 25 Funds, each with its own investment objective and policies. The shares of each IPI Fund are offered and sold through registered separate accounts of insurance companies that are affiliates of the Advisers (''Registered Separate Accounts'') and unregistered separate accounts of insurance companies that are affiliates of the Advisers (''Unregistered Separate Accounts'' and, together with the Registered Separate Accounts, the ''Separate Accounts''), which are used to fund variable annuity contracts and variable life insurance contracts, and may be offered and sold to retirement plans and certain investment advisers, pursuant to an order granted by the Commission.[2] IPI has created 5 new Funds known as the Solutions Portfolios, which will be managed by ILIAC and each of which will be a fund of funds (''Funds of Funds''). The Solutions Portfolios are the only Funds of Funds that currently intend to rely on the requested relief.

2. IIT is a Massachusetts business trust and is registered under the Act as an open-end management investment company. IIT currently consists of 46 Funds, each with its own investment objective and policies. The shares of each IIT Fund currently are offered and sold through Separate Accounts which are used to fund variable annuity contracts and variable life insurance contracts, and may be offered and sold to retirement plans, pursuant to an order granted by the Commission.[3]

3. IVIT is a Delaware statutory trust and is registered under the Act as an open-end management investment company. IVIT currently consists of 11 Funds, each with its own investment objective and policies. IVPT is a Massachusetts business trust and is registered under the Act as an open-end management investment company. IVPT currently consists of 10 Funds, each

[1] All entities that currently intend to rely on the requested order are named as applicants and any other entity that relies on the order in the future will comply with the terms and conditions of the application. Applicants request that the relief also apply to any existing or future registered open-end management investment company that is part of the same group of investment companies as defined in section 12(d)(1)(G) of the Act as the ING Investment Companies (included in the term ''ING Investment Companies'') and any existing or future insurance company controlling, controlled by or under common control with ILIAC that may issue a guaranteed rate investment contract (each an ''ING Insurance Company''). Each series of an ING Investment Company is referred to as a ''Fund'' and collectively as ''Funds.''

[2] Aetna Variable Fund, Investment Company Act Release Nos. 23545 (Nov. 23, 1998) (notice) and 23616 (Dec. 21, 1998) (order).

[3] *Id.*

with its own investment objective and policies. IVPEMF is a Maryland corporate and is registered under the Act as an open-end management investment company. IVPEMF currently consists of one Fund. IVPNRT is a Massachusetts business trust and is registered under the Act as an open-end management investment company. IVPNRT currently consists of one Fund.

4. The Funds of Funds will invest in other Funds (''Affiliated Underlying Funds'') and in other registered open-end management investment companies and unit investment trusts that are not part of the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Funds of Funds (''Unaffiliated Underlying Funds''). The Affiliated Underlying Funds and the Unaffiliated Underlying Funds are together the ''Underlying Funds.'' Each Fund of Funds may also make investments in other securities and in a guaranteed rate investment contract issued by ILIAC or another ING Insurance Company (the ''ING Guaranteed Contract''). ILIAC and all other ING Insurance Companies are indirect subsidiaries of ING Groep, N.V. Applicants state that each Fund of Funds will enable investors to create a comprehensive asset allocation program with just one investment and provide a simple, convenient and cost-efficient program for investors who are able to identify their investment goals and risk tolerances but may not be comfortable deciding how to invest their assets to achieve those goals.

5. Each Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, is a direct or indirect subsidiary of ING Groep, N.V., and serves as investment adviser to the Funds. Each investment adviser to a Fund of Funds that meets the definition of section 2(a)(20)(A) of the Act is referred to as a ''Fund of Funds Adviser.'' Any investment adviser to a Fund of Funds that meets the definition in section 2(a)(20)(B) of the Act is referred to as a ''Fund of Funds Subadviser.''

6. Applicants request relief to permit the Funds of Funds to purchase shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and for the Underlying Funds, their principal underwriters and any broker or dealer to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act. Applicants also seek relief from section 17(a) of the Act to permit Underlying Funds to sell shares to, and redeem shares from, the Funds of Funds. In addition, applicants seek relief from section 17(a) of the Act to permit a Fund of Funds to purchase the ING Guaranteed Contract.

Applicants' Legal Analysis

A. Sections 12(d)(1)(A) and (B) of the Act

1. Section 12(d)(1)(A) prohibits a registered investment company from acquiring shares of another registered investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company or, together with the securities of other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling shares of the company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock or more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction from any provision of section 12(d)(1), if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit Funds of Funds to acquire shares of Underlying Funds and Underlying Funds to sell their shares to Funds of Funds, beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will be structured to mitigate the potential abuses from which sections 12(d)(1)(A) and (B) are designed to protect investors, such as undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over any Underlying Fund. To limit the influence that a Fund of Funds may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting (a)(i) The Fund of Funds Adviser, (ii) any person controlling, controlled by or under common control with the Fund of Funds Adviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Fund of Funds Adviser or any person controlling, controlled by or under common control with the Fund of Funds Adviser (''Group''), and (b)(i) Any Fund of Funds Subadviser, (ii) any person controlling, controlled by or under common control with the Fund of Funds Subadviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Subadviser or any person controlling, controlled by or under common control with the Fund of Funds Subadviser (''Subadviser Group''), from controlling (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions 2–7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of an Unaffiliated Underlying Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis. Condition 2 precludes a Fund of Funds and its Fund of Funds Adviser, any Fund of Funds Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a ''Fund of Funds Affiliate'') from causing any existing or potential investment by the Fund of Funds in an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Unaffiliated Fund Affiliate''). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund that is an open-end management investment company (''Unaffiliated Fund'') or sponsor to an Unaffiliated Underlying Fund that is a unit investment trust (''Unaffiliated Trust'')) from causing an Unaffiliated Underlying Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds

Subadviser, sponsor or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Subadviser, sponsor or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. In addition, as an assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds operating in reliance on the requested relief from sections 12(d)(1)(A) and (B), prior to any investment by the Fund of Funds in the Unaffiliated Fund in excess of the limit set forth in section 12(d)(1)(A)(i), condition 10 requires the Fund of Funds and the Unaffiliated Fund to execute an agreement stating, without limitation, that their boards and their investment adviser understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Underlying Fund has the right to reject an investment from a Fund of Funds.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees (''Board'') of a Fund of Funds, including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will find that any investment advisory fees charged to the Fund of Funds under its investment advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the investment advisory contract(s) of any Underlying Fund. Applicants further state that the Fund of Funds Adviser will waive or offset fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Fund of Funds Adviser, or an affiliated person of the Fund of Funds Adviser, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Applicants also state that any Fund of Funds Subadviser will waive fees otherwise payable to the Fund of Funds Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds Subadviser, or an affiliated person of the Fund of Funds Subadviser, other than any advisory fees paid to the Fund of Funds Subadviser or its affiliated person, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds Subadviser. Applicants agree that the benefit of any such waiver by a Fund of Funds Subadviser will be passed through to the Fund of Funds.

8. Applicants represent that the aggregate sales charges and/or service fees (as defined in the Conduct Rules of the NASD (''NASD Conduct Rules'')) charged with respect to shares of any Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the NASD Conduct Rules. Moreover, the prospectus and sales literature of a Fund of Funds will contain concise, ''plain English'' disclosure tailored to the particular document designed to inform investors of the unique characteristics of the fund of funds structure including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds.

9. Applicants contend that the proposed arrangement will not create an overly complex fund structure. Applicants note that Underlying Funds will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that an Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)), or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

B. Section 17(a) of the Act

1. Section 17(a) generally prohibits purchases and sales of securities, on a principal basis, between a registered investment company and any affiliated person or promoter of, or principal underwriter for, the company, and affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the other's outstanding voting securities; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; any person directly or indirectly controlling, controlled by or under common control with the other person; and any investment adviser to an investment company.

2. Section 17(b) authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) permits the Commission to exempt any person or transaction, or any class or classes of persons or transactions from any provisions of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that an Underlying Fund might be deemed to be an affiliated person of a Fund of Funds if the Fund of Funds acquires 5% or more of the Underlying Fund's outstanding voting securities. Applicants also state that since the Funds of Funds and Affiliated Underlying Funds will be advised by an Adviser, they may be deemed to be under common control and, therefore, affiliated persons of each other. Accordingly, section 17(a) could prevent an Underlying Fund from selling shares to, and redeeming shares from, a Fund of Funds. Applicants state that the consideration paid in sales and redemptions permitted under the requested order of shares of Underlying Funds will be based on the net asset values of the Underlying Funds.

4. ILIAC or another ING Insurance Company will issue an ING Guaranteed Contract to the Funds of Funds. ILIAC also may serve as investment adviser to a Fund of Funds and may also be the record owner of 5% or more of the shares of a Fund of Funds and thus may be deemed to be an affiliated person of the Fund of Funds. The purchase by a Fund of Funds of an ING Guaranteed Contract would therefore be prohibited by section 17(a). Applicants submit that the ING Guaranteed Contract will bear a fixed rate of interest which will be at least as favorable as the guaranteed rate on substantially similar guaranteed contracts offered by the ING Insurance Companies and other insurance companies. Applicants further submit that the Funds of Funds may withdraw assets from the ING Guaranteed Contract at any time if the rate becomes non-competitive (or for any other reason) without the imposition of any sales charge or market value adjustment.

5. Applicants seek an exemption under sections 6(c) and 17(b) to allow the proposed transactions. Applicants state that the transactions satisfy the standards for relief under sections 6(c) and 17(b). Applicants represent that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. This condition shall not apply to a Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Fund of Funds Subadviser or person controlling, controlled by or under common control with the Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Fund of Funds Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an Affiliated Underwriting.

6. The Board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The Board of the Unaffiliated Fund will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase

in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Unaffiliated Fund's Board were made.

8. A Fund of Funds will pay no sales load when purchasing an ING Guaranteed Contract, and will be permitted to remove its assets from an ING Guaranteed Contract at any time without the imposition of a sales charge or market value adjustment.

9. Prior to purchasing an ING Guaranteed Contract, and prior to any periodic adjustment to the rate of interest on an ING Guaranteed Contract held by a Fund of Funds, the Board of the Fund of Funds, including a majority of the Disinterested Trustees, will make a determination that (i) purchasing or maintaining, as applicable, the ING Guaranteed Contract is in the best interests of the Fund of Funds and its shareholders and does not involve overreaching on the part of any person concerned, and (ii) the guaranteed rate on the ING Guaranteed Contract is at least as favorable as the guaranteed rate on substantially similar guaranteed contracts offered by the ING Insurance Companies and other insurance companies. This determination, and the information upon which it was based, will be recorded fully in the minute books of the Fund of Funds.

10. Prior to an investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

11. Prior to approving any investment advisory or management contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, will find that the advisory or management fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Affiliated Underlying Funds or Unaffiliated Funds in which the Fund of Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Funds.

12. The Fund of Funds Adviser will waive or offset fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received by the Fund of Funds Adviser or an affiliated person of the Fund of Funds Adviser from an Unaffiliated Underlying Fund, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Any Fund of Funds Subadviser will waive fees otherwise payable to the Fund of Funds Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds Subadviser, or an affiliated person of the Fund of Funds Subadviser, other than any advisory fees paid to the Fund of Funds Subadviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds Subadviser. In the event that the Fund of Funds Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

13. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the Conduct Rules of the NASD.

14. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (i) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (ii) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions.

15. The Board of any Fund of Funds will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act (''Governance Standards'') by the later of (i) the compliance date for the rule (''Compliance Date'') or (ii) the earlier of the date of reliance on the order or the date on which the Fund of Funds executes a Participation Agreement. The Board of any Unaffiliated Fund will satisfy the Governance Standards by the later of (i) the Compliance Date or (ii) the date on which the Unaffiliated Fund executes a Participation Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5735 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28045]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 12, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 7, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 7, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AGL Resources Inc. et al. (70–10175)

AGL Resources Inc., (''AGL Resources''), a registered holding company, Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309; its public utility subsidiaries: Atlanta Gas Light Company (''AGLC''), Chattanooga Gas Company (''CGC''), Virginia Natural Gas, Inc. (''VNG''), Pivotal Utility Holdings, Inc. (''Pivotal'') and Virginia Gas Distribution Company (''VGDC'') (AGLC, CGC and VNG are collectively referred to as the '' Utility Subsidiaries'')[1]; and the following of its nonutility companies: AGL Rome Holdings, Inc., Georgia Natural Gas Company, AGL Investments, Inc., AGL Networks, LLC, AGL Energy Corporation, AGL Propane Services, Inc., Trustees Investments, Inc., Customer Care Services, Inc., Pivotal Propane of Virginia, Inc., Southeastern LNG, Inc., AGL Services Company, AGL Capital Corporation, Global Energy Resources Insurance Corporation, AGL Capital Trust I, AGL Capital Trust II, and AGL Capital Trust III, all of Ten Peachtree Place, Suite 1000, Atlanta Georgia 30309; SouthStar Energy Services LLC, 817 West Peachtree Street, Atlanta Georgia 30308; and Sequent Energy Management, LP, Sequent, LLC, Sequent Holding, LLC, Sequent Energy Marketing, LP, Pivotal Energy Services, Inc., Jefferson Island Storage & Hub, LLC, (''JISH''), Pivotal Jefferson Island Storage & Hub LLC (''PJISH'') and Pivotal Storage, Inc. (''PSI''), all of 1200 Smith Street, Suite 900, Houston, Texas 77002 (collectively, the ''Nonutility Subsidiaries''; AGL Resources, the Utility Subsidiaries and the Nonutility Subsidiaries are collectively referred to as ''Applicants'') have filed a post-effective amendment (''Application'') under sections 6(a), 7, 9, 10 and 12 of the Act and rules 45, and 54 under the Act.

Applicants request a supplemental order from the Commission for JISH, PJISH and PSI to become parties to and participate in the nonutility money pool as previously authorized for nonutility subsidiaries of AGL Resources (''Nonutility Money Pool'') under the Commission's order dated April 1, 2004 (HCAR No. 27828) (''April 2004 Order'') in order to manage JISH, PJISH and PSI's short-term capital requirements in connection with the gas storage business described below.

AGL Resources directly or indirectly owns all of the issued and outstanding common stock of the Utility Subsidiaries, which are natural gas local distribution utility companies. The Utility Subsidiaries construct, manage and maintain natural gas pipelines in Georgia, Tennessee Virginia, Maryland, Florida and New Jersey and serve more than 2.3 million end-use customers. By order dated November 24, 2004 (HCAR No. 27917) (''November 2004 Order''), AGL Resources was authorized to acquire NUI Corporation and its subsidiaries, including NUI Utilities, Inc. (since renamed Pivotal Utility Holdings, Inc.) and several nonutility companies. The November 2004 Order granted financing authority to NUI Corporation and its subsidiaries, and permitted the nonutility subsidiaries of NUI Corporation to participate in the AGL Resources nonutility money pool under the same terms and conditions as AGL Resources' existing nonutility subsidiaries.

Through its various nonutility subsidiaries, AGL Resources engages in asset optimization, producer services, wholesale marketing and risk management; marketing of natural gas and related services to retail customers; and providing telecommunications conduit and dark fiber. JISH owns and operates two salt dome gas storage caverns with 9.9 million Dekatherms (Dth) of total capacity and approximately 7.3 million Dth of working gas capacity. The facility has withdrawal capacity of over 720,000 Dth per day and injection capacity of 240,000 Dth per day. Through its interconnections with eight pipelines and its access to the Henry Hub, JISH will provide additional access to natural gas supply for AGL Resources' utilities.

Through its indirect wholly owned subsidiary, PJISH, AGL Resources acquired JISH on October 1, 2004 for approximately $90 million, which included approximately $9 million of working gas inventory. Applicants state that the acquisition of JISH is exempt under Rule 58.

Additionally, AGL Resources has formed two new non-utility subsidiaries, PJISH and PSI, which are intermediate holding companies for JISH. PJISH is a subsidiary of PSI and PSI is a subsidiary of AGL Investments, which is a direct wholly owned subsidiary of AGL Resources. Applicants state that the creation of PJISH and PSI is exempt under the April 2004 Order.

The Commission authorized the Applicants in the April 2004 Order to engage in a system of external and intrasystem financing. In particular, as it relates to this Application, AGL Resources, the Utility Subsidiaries, and certain of AGL Resources nonutility subsidiaries were authorized to continue as parties to the AGL Resources utility money pool and Nonutility Money Pool. In addition, to the extent not exempt under Rule 52(b), the nonutility subsidiaries covered by the April 2004 Order were authorized to make unsecured short-term borrowings from the Nonutility Money Pool, to contribute surplus funds to the Nonutility Money Pool, and to lend and extend credit to one another through the Nonutility Money Pool. In the April 2004 Order, the Commission also reserved jurisdiction over the participation of any newly formed or acquired company in either money pool as borrower.

Applicants request authority for JISH, PHISH and PSI to become parties to and participate in the Nonutility Money Pool, subject to the same terms and conditions previously authorized by Commission for the nonutility subsidiaries in the April 2004 Order. Applicants further request that the Commission again reserve jurisdiction over the participation of any other current or future nonutility subsidiaries as a borrower under the Nonutility Money Pool. Applicants propose no other changes to the terms, condition or limitations of the April 2004 Order by this Application.

[1] AGLC, VNG, and CGC are located at Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309. Pivotal is located at 550 Route 202–206, Box 760, Bedminster, New Jersey, and VGDC is located at 1096 Ole Berry Drive, Abingdon, Virginia 24210.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5720 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52592; File No. SR–Amex–2004–76]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Contingency Trading Procedures

October 12, 2005.

I. Introduction

On September 10, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Amex Rule 119A regarding contingency trading procedures. On August 26, 2005, the Exchange submitted Amendment No. 1 to the proposal.[3] On August 29, 2005, the Exchange submitted Amendment No. 2 to the proposal.[4] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 7, 2005.[5] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of Proposal

As set forth in the Notice, the Amex proposes to adopt a new Rule 119A, setting forth the Exchange's contingency trading with respect to the use of the Exchange's ''Alternative Trading Facility'' (''ATF''), which is a remote facility established by the Exchange for trading securities admitted to dealings in the event that the Exchange's primary trading facility at 86 Trinity Place is wholly or partially unusable.

Under proposed Amex Rule 119A(b) the provisions of the Constitution and Rules of the Exchange are applicable to trading conducted on the ATF, except to the extent that the provisions of Amex Rule 119A govern, or unless the context otherwise requires. Paragraph (c) of proposed Amex Rule 119A provides that the Exchange's Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s) shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations, and persons associated with those members and member organizations who are entitled to trade and support trading at the Exchange's facility at 86 Trinity Place. Not all persons who generally conduct business at the Exchange's regular facility will be able to use the ATF due to occupancy restrictions at the facility. One or more individuals from each broker and specialist unit will be allowed to conduct business on the ATF. Registered Option Traders (''ROTs'') will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading. Paragraph (d) to proposed Amex Rule 119A provides that if a ROT is not allowed to trade on the ATF, the ROT may initiate opening trades for his or her market maker account from off the ATF without reference to in-person requirements or the requirement that off-floor orders be effected only for hedging, reducing risk, rebalancing or liquidating positions.

The Exchange states that, although it has installed tethered telephones at the ATF, it has not replicated its wireless telephone system at this facility. As a result, the Amex is proposing to allow members to use personal cellular telephones to conduct business on the ATF subject to the same conditions that were applicable to the use of personal cellular telephones on the Amex following September 11, 2001. The conditions applicable to the use of personal cellular telephones on the ATF are set forth in paragraph (e) to the proposed rule. Paragraph (f) provides that Exchange Officials may substitute for Senior Floor Officials without reference to their seniority in the event that a Floor Official's ruling is appealed to a three Senior Floor Official panel and there is an insufficient number of available Senior Floor Officials to consider the appeal.[6]

III. Discussion

After careful consideration, the Commission finds that the Amex's proposed rule change, as amended, is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities.[9]

The Commission believes that the Amex's proposed rule change, as amended, is an important element of ongoing contingency planning and reasonably designed to permit trading in the event that the Exchange's primary facilities are not available. As proposed, the Commission believes that the ATF is reasonably designed to provide a venue sufficient to accommodate a minimum threshold of Amex members and personnel to support continued operations of the Exchange on a contingency basis. The Commission further believes that the provisions of proposed Amex Rule 119A are reasonably designed to permit the fair and orderly trading of Amex-listed securities on the ATF.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2004–76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5719 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange substantially revised the proposed rule text and corresponding description of the proposal in its Form 19b–4. Amendment No. 1 replaced Amex's original filing in its entirety.

[4] In Amendment No. 2, the Exchange made minor corrections to the rule text.

[5] *See* Securities Exchange Act Release No. 52360 (August 30, 2005), 70 FR 53260 (''Notice'').

[6] The Exchange recently amended Amex Rule 22 to establish a three-level review process in which Floor Official decisions, as needed, may be appealed to a three Senior Floor Official Panel. *See* Securities Exchange Act Release No. 52527 (September 29, 2005), 70 FR 58246 (October 5, 2005) (SR–Amex–2005–052).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 10 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52593; File No. SR–Amex–2005–083]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System

October 12, 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 August 17, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enter into arrangements with other self-regulatory organizations (''SROs'') to pass certain fees they have collected from members for transactions executed on another SRO through the Intermarket Trading System (''ITS''). This proposal does not require changes to Amex rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act[3] requires each national securities exchange to pay the Commission a fee based on the aggregate dollar amount of certain sales of securities (''covered sales''). Rules 31 and 31T, adopted by the Commission in June 2004,[4] established procedures for the calculation and collection of Section 31 fees on such covered sales. Rule 31 requires each national securities exchange that owes Section 31 fees to submit a completed Form R31 to the Commission each month, beginning with July 2004. Rule 31T required each exchange to submit a completed Form R31 for each of the months September 2003 to June 2004, inclusive. Each national securities exchange must report its covered sales volume based on the data from a designated clearing agency, when available. The designated clearing agency for covered sales of equity securities is the National Securities Clearing Corporation (''NSCC''). These covered sales are reported in Part I of Form R31, and each exchange is required to ''provide in Part I only the data supplied to it by a designated clearing agency.''[5] The data supplied by NSCC for the period September 2003 through August 2004 did not accurately reflect the aggregate dollar value of the covered sales occurring on each exchange to permit reports to be made in accordance with new Rules 31 and 31T. In particular, the data NSCC reported to each national securities exchange included non-covered sales data for sales originating on one exchange and executed on another exchange through the ITS.[6]

[3] 15 U.S.C. 78ee.

[4] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004) (''Adopting Release'').

[5] 17 CFR 240.31(b)(5).

[6] As a result of this and other inaccuracies in the data reported by NSCC, the national securities exchanges were unable to report accurate information on Form R31, unless they made adjustments to the NSCC data based on data other than that provided by NSCC. On October 6, 2004, the Commission's Division of Market Regulation (''Division'') issued a ''no-action'' letter advising exchanges for whom NSCC acts as a designated clearing agency under Rule 31, that the Division staff would not recommend that the Commission take enforcement action if a national securities exchange adjusts the data provided by NSCC to accurately reflect covered sales occurring on the national securities exchange. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission to Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc. (''CHX''), dated October 6, 2004.

Section 31 requires that national securities exchanges pay a fee based on the aggregate dollar amount of sales of securities transacted on the exchange. Given the specific language of Section 31, the Commission in the Adopting Release for Rules 31 and 31T advised that the current methodology for treating sales of securities that occur through ITS[7] was no longer appropriate and that ''it would be simpler and more transparent for each covered [SRO] to report all covered sales that occur on its market.'' The Commission further stated:

> The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not be able to collect funds to pay the Section 31 fee from one of its own members. However, Section 31 does not address the manner or extent to which covered SROs may seek to recover the amounts that they pay pursuant to Section 31 from their members. Covered SROs may wish to devise new arrangements for passing fees between themselves so that the funds are collected from the covered SRO that originated the ITS order.[8]

The Commission further noted that any such arrangements devised by the SROs would have to be established pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

A subcommittee of the ITS Operating Committee[9] (''Subcommittee'') has had discussions in order to devise new arrangements for passing fees between the ITS participants that (1) were collected from their members for the months of September 2003 through August 2004; and (2) are being collected from their members beginning in September 2004 and continuing. This proposed rule change is being submitted by the Amex with the understanding that the other exchanges participating in the proposed arrangement devised by the subcommittee will be submitting substantially similar rule change proposals.[10]

[7] In the Adopting Release, the Commission described the current methodology: ''SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. ...[T]he SROs devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees.'' Adopting Release, 69 FR at 41067.

[8] *Id.*

[9] The ITS participants are Amex, Boston Stock Exchange (''BSE''), Chicago Board Options Exchange (''CBOE''), CHX, National Association of Securities Dealers (''NASD''), National Stock Exchange (''NSX''), New York Stock Exchange (''NYSE''), Pacific Exchange (''PCX''), and Philadelphia Stock Exchange (''Phlx'').

[10] NASD has determined not to participate in the arrangement for passing fees between exchanges although they participated in many of the

Pursuant to the new arrangement being proposed, each ITS participant determines whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant. For example, for the historical period, September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. Under the new procedures established by the Commission for the calculation and collection of Section 31 fees on such covered sales, SRO B, as the executing market center, is obligated to pay the Section 31 fee to the SEC. During the same period, SRO B sent ITS commitments for covered sales whose dollar value was $210 million to SRO A. SRO B collected fees from its members for those covered sales executed on SRO A. SRO A, as the executing market center, is obligated to pay the Section 31 fee to the SEC. Since SRO A executed a greater dollar value of covered sales from SRO B than it sent to SRO B, the proposed arrangement requires SRO A to determine the amount of the fees collected by SRO B from its members based on the aggregate dollar value of covered sales from SRO B and executed on SRO A through ITS commitments. When invoicing SRO B, SRO A will deduct the amount of the fee it owes to SRO B (*i.e.*, the fee amount based on SRO A's $210 million in aggregate covered sales less the fee amount based on SRO B's $150 million in aggregate covered sales) and will invoice only for the difference of $60 million.

Once the fees have been invoiced and paid for the historical period, the ITS participants plan to use the same arrangement for the period beginning September 2004 and continuing. It is anticipated that the invoicing process will occur twice yearly to coincide with the March 15 and September 30 payment schedule for Section 31 fees set forth in the Act.

To implement this proposed arrangement, an ITS participant will require access to the aggregate dollar value of buy and sell transactions occurring through ITS. Under the proposed arrangement for fees collected for the months of September 2003 through August 2004, an ITS participant may choose to use data obtained from the Inter-market Surveillance Information System (''ISIS'') or data that provides comparable information that includes aggregate dollar value of ITS transactions.[11] The ISIS data is sorted by originating market center (*i.e.*, the sender of an ITS commitment) and receiving market center (*i.e.*, the market center that executes the ITS commitment). Using this data, each ITS participant can determine on a monthly basis the dollar value of all executed commitments sent to and received from another ITS participant.

At its meeting on February 23, 2005, the Subcommittee asked the Securities Industry Automation Corporation (''SIAC'') to determine the time and expense involved for SIAC to use the ITS database that it maintains to provide reports of the aggregate dollar value of buy and sell transactions occurring through ITS to the ITS participants. On March 15, 2005, representatives of the Subcommittee authorized SIAC to develop new reports. SIAC is in the process of developing these reports and expects to complete testing by August 31, 2005. Once SIAC can provide this data, it will no longer be necessary for ISIS data to be used. The new reports provided by SIAC will be used by ITS participants in connection with determining which ITS participant will pay the fee for transactions occurring through ITS and which ITS participant has collected the fee from its members.

The Amex believes that the proposed arrangement is a fair and efficient means for passing fees collected at one ITS participant based upon executions of covered sales occurring at another ITS participant. The Amex acknowledges that the legal duty to report and pay the Section 31 fee remains with the ITS participant on which the sale was in fact transacted.

2. Statutory Basis

This proposal would establish a process for SROs to enter into arrangements to pass fees they have collected from members for transactions executed on another SRO through ITS. For these reasons, the Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[14] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–083 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–Amex–2005–083. 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

conference calls regarding the proposed arrangement.

[11] The NYSE has made available to the ITS participants spreadsheets for each month in the period using the ISIS data.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–083 and should be submitted on or before November 8, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[16] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to persons who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. Under the proposed arrangement, which the Commission understands will be adopted by each of the ITS participant exchanges,[17] the exchange that routed the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,[18] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already consented to and will adopt the same fee arrangement.[19]

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Amex–2005–083) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5721 Filed 10–17–05; 8:45 am]

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[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(4).

[17] *See* letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, and Chairman, Subcommittee, to Michael Gaw, Assistant Director, Division, Commission, dated September 29, 2005.

[18] 15 U.S.C. 78s(b)(2).

[19] *See supra* note 17.

[20] *Id.*

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52577; File No. SR–CBOE–2005–60]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to an Automated Improvement Mechanism

October 7, 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 August 5, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 substantially prepared by the CBOE. On September 2, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to adopt an electronic price improvement mechanism. Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.74A Automated Improvement Mechanism (''AIM'')

Notwithstanding the provisions of Rule 6.74, a member that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction (''Auction'') pursuant to this Rule.

(a) Auction Eligibility Requirements. A member (the ''Initiating Member'') may initiate an Auction provided all of the following are met:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

[3] Amendment No. 1 superseded and replaced the proposed rule filing in its entirety.

(1) the Agency Order is in a class designated as eligible for AIM Auctions as determined by the appropriate Floor Procedure Committee and within the designated Auction order eligibility size parameters as such size parameters are determined by the appropriate Floor Procedure Committee;

(2) if the Agency Order is for 50 contracts or more, the Initiating member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order);

(3) if the Agency Order is for less than 50 contracts, the Initiating member must stop the entire Agency Order as principal or with a solicited order at the better of (A) the NBBO price improved by one minimum price improvement increment, which increment shall be determined by the Exchange but may not be smaller than one cent; or (B) the Agency Order's limit price (if the order is a limit order); and

(4) at least three (3) Market-Makers are quoting in the relevant series.

(b) Auction Process. Only one Auction may be ongoing at any given time in a series and Auctions in the same series may not queue or overlap in any manner. The Auction may not be cancelled and shall proceed as follows:

(1) Auction Period and Request for Responses (RFRs).

(A) To initiate the Auction, the Initiating Member must mark the Agency Order for Auction processing, and specify (i) a single price at which it seeks to cross the Agency Order (with principal interest or a solicited order) (a ''single-price submission''), or (ii) that it is willing to automatically match as principal the price and size of all Auction responses (''auto-match'') in which case the Agency Order will be stopped at the NBBO (if 50 contracts or greater) or one cent/one minimum increment better than the NBBO (if less than 50 contracts). Once the Initiating Member has submitted an Agency Order for processing pursuant to this subparagraph, such submission may not be modified or cancelled.

(B) When the Exchange receives a properly designated Agency Order for Auction processing, a Request for Responses (''RFR'') detailing the side and size of the order will be sent to all members that have elected to receive RFRs.

(C) The RFR will last for a random time period determined by the system that shall not be less than 3 seconds and shall not exceed 5 seconds.

(D) Each Market-Maker with an appointment in the relevant option class may submit responses to the RFR (specifying prices and sizes). Such responses cannot cross the disseminated Exchange quote on the opposite side of the market.

(E) Floor Brokers may submit responses to the RFR (specifying prices and sizes) only on behalf of orders resting at the top of the Exchange's book (resting at the BBO) opposite the Agency Order. Such responses cannot cross the disseminated Exchange quote on the opposite side of the market, and may not exceed the size of the booked order being represented.

(F) RFR responses shall not be visible to other Auction participants, and shall not be disseminated to OPRA.

(G) The minimum price increment for RFR responses and for an Initiating Member's single price submission shall not be smaller than the minimum price improvement increment established pursuant to subparagraph (a)(3)(A) above.

(H) An RFR response size at any given price point may not exceed the size of the Agency Order.

(I) RFR responses may be modified or cancelled.

(2) Conclusion of Auction. The Auction shall conclude at the sooner of (A) through (E) below with the Agency Order executing pursuant to paragraph (3) below.

(A) The end of the RFR period;

(B) Upon receipt by the Hybrid System of an unrelated order (in the same series as the Agency Order) that is marketable against either the Exchange's disseminated quote (when such quote is the NBBO) or the RFR responses;

(C) Upon receipt by the Hybrid System of an unrelated limit order (in the same series as the Agency Order and on the opposite side of the market as the Agency Order) that improves any RFR response;

(D) Any time an RFR response matches the Exchange's disseminated quote on the opposite side of the market from the RFR responses; or

(E) Any time there is a quote lock on the Exchange pursuant to Rule 6.45A(d).

(3) Order Allocation. At the conclusion of the Auction, the Agency Order will be allocated at the best price(s) pursuant to the matching algorithm in effect for the class subject to the following:

(A) Such best prices may include non-Auction quotes and orders.

(B) Public customer orders in the book shall have priority.

(C) No participation entitlement shall apply to orders executed pursuant to this Rule.

(D) If an unrelated market or marketable limit order on the opposite side of the market as the Agency Order was received during the Auction and ended the Auction, such unrelated order shall trade against the Agency Order at the midpoint of the best RFR response and the NBBO on the other side of the market from the RFR responses (rounded towards the disseminated quote when necessary).

(E) If an unrelated non-marketable limit order on the opposite side of the market as the Agency Order was received during the Auction and ended the Auction, such unrelated order shall trade against the Agency Order at the midpoint of the best RFR response and the unrelated order's limit price (rounded towards the unrelated order's limit price when necessary).

(F) If the best price equals the Initiating Member's single-price submission, the Initiating Member's single-price submission shall be allocated the greater of one contract or 40% of the order. However, if only one Market-Maker matches the Initiating Member's single price submission then the Initiating Member shall be allocated 50% of the order.

(G) If the Initiating Member selected the auto-match option of the Auction, the Initiating Member shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating Member shall be allocated the greater of one contract or 40% of the remainder of the order.

(H) If the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any public customer order priority and the Initiating Member's priority (40%) have been satisfied. Any unexecuted balance on the Agency Order shall be allocated to RFR responses provided that those RFR responses will be capped to the size of the unexecuted balance and that the Initiating Member may not participate on any such balance unless the Agency Order would otherwise go unfilled.

(I) If the final Auction price locks a customer order in the book on the same side of the market as the Agency Order, then, unless there is sufficient size in the Auction responses to execute both the Agency Order and the booked customer order (in which case they will both execute at the final Auction price), the Agency Order will execute against the RFR responses at one minimum RFR response increment worse than the final Auction price against the Auction participants that submitted the final Auction price and any balance shall

trade against the customer order in the book at such order's limit price.

If an unexecuted balance remains on the Auction responses after the Agency Order has been executed and such balance could trade against any unrelated order(s) that caused the Auction to conclude, then the RFR balance will trade against the unrelated order(s).

** * * Interpretations and Policies:*

.01 The Auction may be used only where there is a genuine intention to execute a bona fide transaction.

.02 A pattern or practice of submitting unrelated orders that cause an Auction to conclude before the end of the RFR period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 to engage in a pattern of conduct where the Initiating Member breaks-up an Agency Order into separate orders for two (2) or fewer contracts for the purpose of gaining a higher allocation percentage than the Initiating Member would have otherwise received in accordance with the allocation procedures contained in subparagraph (b)(3) above.

.03 Initially, and for at least a Pilot Period expiring on July 18, 2006, there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 Any solicited orders submitted by the Initiating Member to trade against the Agency Order may not be for the account of a Market-Maker assigned to the option class.

.05 Any determinations made by the Exchange pursuant to this Rule such as eligible classes, order size parameters and the minimum price increment for RFR responses shall be communicated in a Regulatory Circular.

.06 Subparagraph (b)(2)(E) of this rule will be effective for a Pilot Period until July 18, 2006. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which early termination of the Auction occurs pursuant to this provision as well as any other provision, and also the frequency with which early termination pursuant to this provision results in favorable pricing for the Agency Order.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish an Automated Improvement Mechanism (''AIM'') that would electronically auction certain orders for price improvement. Under the AIM process, a member (''Initiating Member'') that represents agency orders may submit an order it represents as agent (''Agency Order'') along with a second order (a principal order or a solicited order for the same amount as the Agency Order) into the AIM auction where other participants could compete with the Initiating Member's second order to execute against the Agency Order.

When submitting an Agency Order into the AIM auction, the Initiating Member must also submit a contra-side second order for the same size as the Agency Order. This second order guarantees that the Agency Order will receive an execution (*i.e.*, it acts as a stop).[4] Once an AIM auction has commenced, it cannot be cancelled by the Initiating Member. The Initiating Member may enter the second order in one of two formats: (1) a specified single price, or (2) a non-price specific commitment to match as principal the price and size of all auction responses that are received during the auction. In this case, the Initiating Member would have no control over the match price.

Upon receipt of an Agency Order (and second order), the Exchange would commence the AIM auction by issuing a request for responses (''RFR'') detailing the side and size of the Agency Order.[5] The RFR response period (*i.e.*, the auction) would last for a random time period (calculated by the Exchange system) that shall not be less than 3 seconds and shall not exceed 5 seconds. During that period any Market-Maker with an appointment in the class as well as any Floor Broker on behalf of orders resting at the top of the Exchange's book opposite the Agency Order may submit RFR responses (including multiple responses). These responses must specify price and size and may not cross the Exchange's quote on the opposite side of the market. All RFR responses are ''blind,'' that is, they are not visible to any other participants. CBOE believes this aspect of the auction will encourage more aggressive quoting and superior price improvement. RFR responses may be modified or cancelled so long as they are modified or cancelled before the conclusion of the random RFR response period. Lastly, the RFR response minimum price increment may be set by the Exchange at no less than one cent.

Normally, the auction ends at the conclusion of the random RFR response timer (3 to 5 seconds),[6] however, the proposal provides that certain other events would end the auction prior to the conclusion of the RFR timer. These events are: (1) receipt by the Hybrid System of an unrelated order, in the same series as the Agency Order, that is marketable against the Exchange's disseminated quote (when such quote is the NBBO) or the RFR responses, (2) receipt by the Hybrid System of an unrelated non-marketable limit order, in the same series as the Agency Order and on the opposite side of the market as the Agency Order, that improves any RFR response, (3) any time an RFR response matches the Exchange's disseminated quote on the opposite side of the market, and (4) pursuant to a pilot program that will expire on July 18, 2006, any time there is a Market-Maker to Market-Maker quote lock on the

[4] In connection with the stop of the Agency Order, the following shall apply: if (1) the Agency Order is for less than 50 contracts, the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of (A) the national best bid or offer (''NBBO'') price improved by one minimum price improvement increment, which increment shall be determined by the Exchange but may not be smaller than one cent; or (B) the Agency Order's limit price (if the order is a limit order); and (2) if the Agency Order is for 50 contracts or more, the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order).

[5] Each RFR would be sent to all members electing to receive RFRs (*i.e.*, those members who have established the necessary systems connectivity to receive RFRs). Thus, such election to receive RFRs would not be on a case-by-case basis. Only members specified in proposed CBOE Rule 6.74A(b)(1)(D) and (E) may submit responses.

[6] CBOE represents that this random time period would be determined solely by the Exchange system.

Exchange (in accordance with CBOE Rule 6.45A(d)).[7]

At the conclusion of the auction, the Agency Order would be allocated in accordance with applicable matching algorithm rules in effect for such class subject to the following provisions. First, no participation entitlement would apply with respect to an AIM execution. Second, public customer orders in the book would have priority. Third, if an unrelated market order or marketable limit order on the opposite side of the market as the Agency Order was received during the auction and ended the auction, such unrelated order would trade against the Agency Order at the midpoint of the best RFR response and the NBBO on the other side of the market (rounded towards the disseminated quote when necessary).[8] Fourth, if an unrelated non-marketable limit order on the opposite side of the market as the Agency Order was received during the auction and ended the auction, such unrelated limit order would trade against the Agency Order at the midpoint of the best RFR response and the unrelated order's limit price (rounded towards the unrelated order's limit price when necessary).[9] Fifth, if the best price equals the Initiating Member's single-price submission, the Initiating Member's single-price submission would be allocated the greater of one contract or 40% of the order. However, if only one Market-Maker matches the Initiating Member's single price submission then the Initiating Member would be allocated 50% of the order. Sixth, if the Initiating Member selected the auto-match option of the auction, the Initiating Member would be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating Member would be allocated the greater of one contract or 40% of the remainder of the order. Seventh, if the auction does not result in price improvement over the Exchange's disseminated price at the time the auction began, resting unchanged quotes or orders that were disseminated at the best price before the auction began would have priority after any public customer order priority and the Initiating Member's priority (40%) have been satisfied. Any unexecuted balance on the Agency Order would be allocated to RFR responses pursuant to the matching algorithm except that the responses would be capped to the size of the unexecuted balance and the Initiating Member may not participate on any such balance unless the Agency Order would otherwise go unfilled. Eight, if the final auction price locks a customer order in the book on the same side of the market as the Agency Order, then, unless there is sufficient size in the auction responses to execute both the Agency Order and the booked customer order (in which case they will both execute at the final auction price), the Agency Order would execute against the RFR responses at one minimum RFR response increment worse than the final Auction price against the auction participants that submitted the final auction price and any balance would trade against the customer order in the book at such order's limit price.

If an unexecuted balance remains on the auction responses after the Agency Order has been executed and such balance could trade against any unrelated order(s) that caused the Auction to conclude, then the RFR balance would trade against the unrelated order(s). CBOE believes this is a benefit to the market in that excess auction liquidity would be available to orders other than the Agency Order.

Lastly, the Exchange proposes certain interpretations and policies. First, the auction may be used only where there is a genuine intention to execute a bona fide transaction. Second, a pattern or practice of submitting unrelated orders that cause an auction to conclude before the end of the RFR period would be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 and other Exchange Rules. Third, initially, and for at least a Pilot Period expiring on July 18, 2006, there would be no minimum size requirement for orders to be eligible for the auction. During this Pilot Period, the Exchange would submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any data which is submitted to the Commission would be provided on a confidential basis. Fourth, any solicited orders submitted by the Initiating Member to trade against the Agency Order may not be for the account of a Market-Maker assigned to the option class. Fifth, any determinations made by the Exchange pursuant to the proposed rule such as eligible classes, order size parameters and the minimum price increment for RFR responses would be communicated in a Regulatory Circular. Finally, proposed CBOE Rule 6.74A(b)(2)(E), which would end the auction because of a lock on the CBOE market, would operate as a pilot program until July 18, 2006.

2. Statutory Basis

The Exchange believes the proposed rule change 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 remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposal would provide an opportunity for customers to receive price improvement on their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

[7] In connection with this pilot program, the Exchange would provide the Commission data (on a confidential basis) regarding the frequency with which early termination of the Auction occurs pursuant to this provision as well as any other provision, and also the frequency with which early termination pursuant to this provision results in favorable pricing for the Agency Order. Proposed Interpretation .06 to Proposed CBOE Rule 6.74A.

[8] For example, if an AIM auction is underway for an Agency Order to buy and the CBOE quote (as well as the NBBO) is 1–1.15 with the RFR responses at 1.12 and an unrelated market order to sell is received by the Exchange, the unrelated order would execute against the Agency Order at 1.06 (the midpoint of the best RFR responses and the NBBO).

[9] For example, using the same scenario as above except the unrelated order is a non-marketable limit order to sell at 1.10, the unrelated order would execute against the Agency Order at 1.11 (the midpoint of the best RFR responses and the unrelated order's limit price).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed 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–CBOE–2005–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–60 and should be submitted on or before November 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5728 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52578; File No. SR–ISE–2005–27]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change Relating to Listing Standards for Broad-Based Index Options

October 7, 2005.

I. Introduction

On May 19, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish listing and maintenance standards and position limits for options on broad-based indexes. The ISE filed Amendment No. 1 to the proposed rule change on July 13, 2005.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 27, 2005.[4] The Commission received no comments regarding the proposal, as amended. The ISE filed Amendment No. 2 to the proposed rule change on September 26, 2005, and withdrew Amendment No. 2 on September 28, 2005. The ISE filed Amendment No. 3 to the proposed rule change on September 28, 2005, and withdrew Amendment No. 3 on October 6, 2005. The ISE filed Amendment No. 4 to the proposal on October 6, 2005.[5] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment No. 4 to the proposal.

II. Description of the Proposed Rule Change

The ISE proposes to adopt ISE Rule 2002(d) to establish initial listing standards for broad-based index options. The proposal will allow the ISE to list, pursuant to Rule 19b–4(e) under the Act,[6] broad-based index options that meet the listing standards in ISE Rule 2002(d). The listing standards require, among other things, that the underlying index be broad-based, as defined in ISE Rule 2001(j); that options on the index be a.m.-settled; that the index be capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted; and that the index be comprised of at least 50 securities, all of which must be ''NMS stocks,'' as defined in Rule 600 of Regulation NMS.[7] In addition, ISE Rule 2002(d) requires that the index's component securities meet certain minimum market capitalization and average daily trading volume requirements; that no single component account for more than 10% of the weight of the index and that the five highest weighed components represent no more than 33% of the weight of the index; that the index value be widely disseminated at least every 15 seconds; and that the ISE have written surveillance procedures in place with respect to the index options.

The ISE also proposes to adopt ISE Rule 2002(e), which establishes maintenance standards for broad-based index options listed pursuant to ISE Rule 2002(d). In addition, the ISE proposes to amend ISE Rule 2004(a) to establish a position limit of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to ISE Rule 2002(d).[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 makes technical corrections to the proposal, including revisions that clarify the applicability of the market capitalization and options eligibility requirements in ISE Rule 2002(d).

[4] *See* Securities Exchange Act Release No. 52084 (July 20, 2005), 70 FR 43481.

[5] Amendment No. 4 revises the proposal to: (1) Provide that an index's component securities must be ''NMS stocks'' rather than ''reported securities;'' (2) identify the entities or services that will disseminate index values; (3) state that the ISE has an adequate surveillance program for broad-based index options; and (4) clarify that the position limits for broad-based index options apply to option contracts on the same side of the market.

[6] 17 CFR 240.19b–4(e).

[7] *See* Amendment No. 4, *supra* note 5. Rule 600 of Regulation NMS defines an ''NMS stock'' to mean ''any NMS security other than an option.'' An ''NMS security'' is ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' *See* 17 CFR 242.600.

[8] *See* Amendment No. 4, *supra* note 5.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

To list options on a particular broad-based index, the ISE currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

As described more fully above, the ISE proposes to establish listing standards for broad-based index options. The Commission's approval of the ISE's listing standards for broad-based index options will allow options that satisfy the listing standards to begin trading pursuant to Rule 19b–4(e), without constituting a proposed rule change within the meaning of Section 19(b) of the Act and Rule 19b–4, for which notice and comment and Commission approval is necessary.[10] The ISE's ability to rely on Rule 19b–4(e) to list broad-based index options that meet the requirements of ISE Rule 2002(d) potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making new broad-based index options available to investors more quickly.

The Commission notes that the ISE has represented that it has adequate trading rules, procedures, listing standards, and surveillance program for broad-based index options. ISE's existing index option trading rules and procedures will apply to broad-based index options listed pursuant to ISE Rule 2002(d). Other existing ISE rules, including provisions addressing sales practices and margin requirements, also will apply to these options. In addition, the ISE proposes to establish position and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to ISE Rule 2002(d).[11] The Commission believes that the proposed position and exercise limits should serve to minimize potential manipulation concerns.

The ISE represents that it has adequate surveillance procedures for broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to ISE Rule 2002(d).[12] In addition, because ISE Rule 2002(d) requires that each component of an index be an ''NMS stock,'' as defined in Rule 600 of Regulation NMS under the Act, each index component must trade on a registered national securities exchange or through Nasdaq. Accordingly, the ISE will have access to information concerning trading activity in the component securities of an underlying index through the Intermarket Surveillance Group (''ISG'').[13] ISE Rule 2002(d) also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the ISE and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.[14] The Commission believes that these requirements will help to ensure that the ISE has the ability to monitor trading in broad-based index options listed pursuant to ISE Rule 2002(d) and in the component securities of the underlying indexes.

The Commission believes that the requirements in ISE Rule 2002(d) regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, ISE Rule 2002(d) requires that the underlying index be ''broad-based,'' as defined in ISE Rule 2001(j).[15] The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in ISE Rule 2002(d) that the current index value be widely disseminated at least once every 15 seconds by the Options Price Reporting Authority, the Consolidated Tape Association, the Nasdaq Index Dissemination Service or by one or more major market data vendors during the time an index option trades on the ISE should provide transparency with respect to current index values and contribute to the transparency of the market for broad-based index options.[16] In addition, the Commission believes, as it has noted in other contexts, that the requirement in ISE Rule 2002(d) that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.[17]

Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 to the

[9] 15 U.S.C. 78f(b)(5).

[10] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[11] *See* Amendment No. 4, *supra* note 5. Under ISE Rule 2007, the exercise limits for index options are equivalent to the position limits prescribed for option contracts with the nearest expiration in ISE Rule 2004 or ISE Rule 2005.

[12] *See* Amendment No. 4, *supra* note 5.

[13] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the National Association of Securities Dealers, Inc., are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

[14] However, such non-U.S. index components, as ''NMS stocks,'' would be registered under Section 12 of the Act and listed and traded on a national securities exchange or Nasdaq, where there is last sale reporting.

[15] ISE Rule 2001(j) defines ''broad-based index'' to mean ''an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.''

[16] *See* Amendment No. 4, *supra* note 5. The Commission notes, however, that if the ISE designated a data vendor, on an exclusive basis, to disseminate index values on behalf of the ISE, such vendor would be an ''exclusive processor'' under Section 3(a)(22)(B) of the Act and, absent an exemption, would be required to register as a securities information processor under Section 11A(b)(1) of the Act.

[17] *See, e.g.,* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving a Chicago Board Options Exchange, Incorporated proposal to establish opening price settlement for S&P 500 Index options).

proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 4 strengthens and clarifies the proposal by revising the proposal to: (1) Provide that an index's component securities must be ''NMS stocks'' rather than ''reported securities;'' (2) identify the entities or services that will disseminate index values; (3) state that the ISE has an adequate surveillance program for broad-based index options; and (4) clarify that the position limits for broad-based index options apply to option contracts on the same side of the market. Accordingly, the Commission finds that it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 4 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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–ISE–2005–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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, 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 ISE. 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–ISE–2005–27 and should be submitted on or before November 8, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–ISE–2005–27), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–20775 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52581; File No. SR–NASD–2005–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Expansion of OATS Reporting Requirements to OTC Equity Securities

October 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 25, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 6951 and 6952 to require members to record and report to the Order Audit Trail System (''OATS'') order information relating to OTC equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6950. Order Audit Trail System

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (i) No change.

(j) ''Order'' shall mean any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security *or OTC equity security* that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

(k) ''Order Audit Trail System'' shall mean the automated system owned and operated by the Association that is designed to capture order information reported by members for integration with trade [information reported to the Nasdaq Market Center] and quotation information [disseminated by members in order] to provide the Association with an accurate time sequenced record of orders and transactions.

(l) ''OTC equity security'' shall mean:

(1) any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange;

(2) any equity security that is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; or

(3) any Direct Participation Program as defined in Rule 6910 that is not listed on The Nasdaq Stock Market or a national securities exchange.

[(l)] *(m)* ''Program Trade'' shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of $1 million or more, as further defined in New York Stock Exchange Rule 80A.

[(m)] *(n)* ''Reporting Agent'' shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Rule 6955.

[(n)] *(o)* ''Reporting Member'' shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955.

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

6952. Applicability

(a) through (b) No change.

(c) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all executed or unexecuted orders [for equity securities traded in The Nasdaq Stock Market].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

NASD Rules 6950 through 6957 (the ''OATS Rules'') impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled or executed by NASD members relating to equity securities listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq''). OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes and transactions. This information is critical to NASD in conducting surveillance and investigations of member firms for violations of NASD rules and federal securities laws.

To enhance the effectiveness of OATS as a regulatory tool, NASD is proposing to amend the OATS Rules to require members to record and report order information relating to OTC equity securities. For purposes of the proposed rule change, an ''OTC equity security'' is defined as (1) any equity security that is not listed on Nasdaq or a national securities exchange; (2) any equity security that is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; or (3) any Direct Participation Program as defined in NASD Rule 6910 that is not listed on Nasdaq or a national securities exchange. This definition would include, inter alia, equity securities quoted on the OTC Bulletin Board Service and the Pink Sheets Electronic Quotation Service.

Currently, the OATS requirements do not apply to OTC equity securities and as a result, NASD is unable to recreate, on an automated basis, an order and transaction audit trail for these securities. NASD believes that expansion of OATS requirements to these securities would enhance its ability to review and examine for member compliance with certain trading rules, including, but not limited to, NASD Rule 2320 (Best Execution and Interpositioning), NASD Rule 6541 (Limit Order Protection) and NASD Rule 3320 (Offers at Stated Prices). NASD recognizes that the trading in OTC equity securities is often more manual than Nasdaq securities and this may result in additional burdens on member firms to capture this data electronically. NASD, however, believes capturing and reporting this information electronically to NASD is critical to NASD's surveillance program.

In recognition of the technological and systems changes the proposed rule change will require, NASD is proposing an effective date of 120 days following publication of revised OATS Technical Specifications, which will be published no later than 60 days following Commission approval. The effective date will be announced in a *Notice to Members*.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[3] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes the proposed rule change is consistent with the Act because it will enhance NASD's ability to conduct surveillance and investigations of member firms for violations of NASD's rules and federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was published for comment in NASD's *Notice to Members* 04–80 (November 2004) (''NTM''). In the NTM, NASD solicited comment from members regarding several proposals, only one of which is encompassed by the proposed rule change.[4] Eight comment letters were received with respect to this proposal in response to the NTM.[5]

Two commenters expressed support for the proposal to expand OATS requirements to OTC equity securities.[6] One commenter noted that it would not be difficult to extend OATS reporting to such securities.[7] Another commenter noted that such a change would be relatively straightforward, but indicated that service bureaus will need adequate time to make the required system changes.[8] One commenter stated that expanding OATS requirements to OTC equity securities would be problematic because the nature of that business is manual, not electronic.[9] The commenter indicated that the proposal would require manual recording of data at all locations through which the order may pass, which would result in delays in executions and a high rate of errors if order information is communicated orally.[10]

[4] Three other proposals were discussed in the NTM, but are not part of this proposed rule change. The first would require members to record and report to OATS order information relating to exchange-listed securities. The second would require enhanced information, including execution data, relating to orders routed to non-members or exchanges. The third would require members to record and report to OATS proprietary orders generated in the ordinary course of market making activities. NASD is still analyzing these proposals and therefore is not proposing amendments related to these proposals at this time. Accordingly, NASD is not addressing herein the comments received in response to these three proposals.

[5] *See* letters from Emily Vitale dated November 24, 2004; Joseph P. Traba on behalf of ML Stern & Co., LLC dated January 14, 2005 (''ML Stern Letter''); Caroline F. Langner, Director, Corporate Compliance, Ameritrade, Inc. dated January 18, 2005 (''Ameritrade Letter''); Deborah Mittelman, First Vice President, Instinet Group dated January 20, 2005; Stuart Bowers, Chairman, Operations Committee of the Securities Industry Association dated January 20, 2005 (''SIA Letter''); Jess Haberman, Chief Compliance Officer and Vice President, royalblue Financial Corporation dated January 20, 2005 (''royalblue Letter''); Jed Bandes dated January 20, 2005 (''Bandes Letter''); and Rob Schroeder, FIF Program Director, The Financial Information Forum dated January 21, 2005 (''FIF Letter'').

[6] *See* Ameritrade Letter and royalblue Letter.

[7] *See* royalblue Letter.

[8] *See* FIF Letter.

[9] *See* SIA Letter.

[10] *Id.*

One commenter noted the significant burdens of the proposal and suggested that NASD allow at least six months for implementation of the proposed rule change.[11] Another commenter noted the other significant industry initiatives that require management and development resources and requested a reasonable time to implement the proposed changes.[12] Two commenters opposed the OATS rules generally, without specifically commenting on any of the proposals.[13] These commenters cited the additional costs and burdens to member firms of complying with the OATS requirements.[14]

Although it understands that the proposed rule change may impose additional costs and burdens on members, in part due to the more manual nature of trading in OTC equity securities, NASD believes that this additional OATS data is critical to NASD's surveillance and regulatory program. To address the concerns raised by commenters, as described above, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make the necessary technological and systems changes.

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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2005–101 and should be submitted on or before November 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5718 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* Ameritrade Letter.

[12] *See* FIF Letter.

[13] *See* ML Stern Letter and Bandes Letter.

[14] *Id.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52576; File No. SR–NSX–2005–06]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, To Amend the Exchange's Customer Priority Rule To Require Designated Dealers To Implement and Maintain Automated Compliance Systems

October 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2005, the National Stock Exchange SM (''NSX'' 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 NSX. On October 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On October 7, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment Nos. 1 and 2 are incorporated into this notice. 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 Exchange proposes to amend the text of Exchange Rule 12.6 (''Customer Priority Rule'') to require the Exchange's Designated Dealers to implement and maintain automated systems reasonably designed to ensure compliance with the Customer Priority Rule. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

Rules of National Stock Exchange

* * * * *

Chapter XII Trading Practice Rules

* * * * *

Rule 12.6. Customer Priority

(a)–(c) No change to text

(d) (Reserved).

(e) Designated Dealers executing customer orders on the Exchange are required to implement and maintain automated systems reasonably designed to ensure compliance with this Rule. The Exchange will allow any Designated Dealer to comply manually with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

provisions of this Rule for a reasonably limited duration in the event that such Designated Dealer's automated systems become inoperative as a result of any act, condition or cause beyond the reasonable control of the Designated Dealer, including, but not limited to, an act of God, fire, flood, extraordinary weather conditions, war, insurrection, riot, strike, accident, action of government, communications or power failure, or any equipment or software malfunction. Designated Dealers shall not otherwise disable or disengage their automated systems. Designated Dealers shall promptly notify the Exchange of any changes in the operating status of their automated systems.

Interpretations and Policies

.01 If a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer's *automated system* shall *systemically* cross them without interpositioning itself as a dealer.

.02 No change to text

.03 A member or any associated person of a member responsible for entering orders for its own account or any account in which it is directly or indirectly interested shall be presumed to have knowledge of a particular unexecuted customer order. Such presumption can be rebutted by adequate evidence which effectively demonstrates, to the Exchange's satisfaction, that the member has implemented a reasonable system of internal policies and procedures and has an adequate system of internal controls to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposal and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Customer Priority Rule provides, in pertinent part, that no member of the Exchange shall: (i) Personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

On May 19, 2005, the Exchange consented to the entry of an order by the Commission instituting administrative and cease-and-desist proceedings pursuant to Sections 19(b) and 21C of the Act.[3] The Settlement Order found, among other things, that the Exchange failed to enforce compliance by its members with the Customer Priority Rule. As part of its undertakings in the Settlement Order, the Exchange agreed to propose rule changes requiring Designated Dealers to implement systems enhancements to comply with the Customer Priority Rule.

In late 2004, the Exchange implemented automated daily surveillance for potential violations of the Customer Priority Rule. The Exchange believes that requiring Designated Dealers to have automated systems reasonably designed to comply with the Customer Priority Rule before and during the process of executing a proprietary trade would effectively complement the Exchange's post-trade surveillance. Accordingly, the Exchange proposes to require its Designated Dealers to implement and maintain automated systems reasonably designed to meet this goal. Moreover, the Exchange believes that the proposed amendment is designed to further ensure that executable public orders on the Exchange are protected to the fullest possible extent.

The Exchange has long recognized the utility of information barriers in preventing the misuse of information by an associated or affiliated person of a member when such information is acquired or generated by another associated or affiliated person of such member under an obligation to protect such information. For example, Exchange Rule 5.5 provides for the establishment by Designated Dealers of procedures reasonably designed to prevent misuse by the firms' associated and affiliated persons of the information associated with the firms' specialist operations.[4] While Rule 5.5 by its terms is applicable only to Designated Dealers, the Exchange believes that any member may establish appropriate functional separation to prevent the misuse of information about customer orders by those responsible for entering proprietary orders. Members with effective information barriers can avoid violations of the Customer Priority Rule because such information barriers would prevent the members from having the requisite knowledge that they are holding an unexecuted customer order. In order to clarify and codify this interpretation, the Exchange is proposing to add a new interpretation to the Customer Priority Rule. This proposed Interpretation .03 to Rule 12.6 indicates that a member or associated persons of a member responsible for entering proprietary orders presumptively has knowledge of a particular customer order. Any member or associated person of a member can rebut this presumption by providing evidence to the Regulatory Services Division of the Exchange demonstrating that the member has a system of internal policies and procedures and an adequate system of internal controls in place to prevent the misuse of information about customer orders by those responsible for entering proprietary orders.[5] The evidence provided by the member or the associated person of the member may be subjected to further scrutiny, investigation and examination by the Regulatory Services Division to

[3] *See* Exchange Act Release No. 51714 (May 19, 2005) (''Settlement Order'').

[4] The Exchange's Examination Department regularly examines those Designated Dealers that previously obtained Exchange approval under Rule 5.5 for the functional separation of such firm's specialist operations from the firm's associated and affiliated persons. These examinations help ensure the existence of the Designated Dealers' compliance and audit procedures reasonably designed to maintain functional separation as evidenced by such things as separate physical locations and limitations on traders' access to information while at the firms.

[5] The Exchange believes that this proposal is consistent with the way in which other self-regulatory organizations interpret their trading ahead rules. *See, e.g.,* Supplementary Material .10 of NYSE Rule 92 and NASD Notice to Members 95–43 (interpreting NASD IM–2110–2).

determine whether the presumption has been adequately rebutted.[6]

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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–NSX–2005–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSX–2005–06. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2005–06 and should be submitted on or before November 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5726 Filed 10–17–05; 8:45 am]

BILLING CODE 8010–01–P

[6] It is important to note that the Exchange only conducts routine examinations of its Designated Dealers. Any member that is not the subject of a routine examination and that seeks to rely on proposed Interpretation .03, when confronted with an inquiry concerning its trading practices under the Customer Priority Rule, must be prepared to provide evidence to the Exchange of its information barrier policies and procedures for review so the Exchange can determine whether such evidence rebuts the presumption of knowledge of a particular unexecuted customer order.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10180 and #10181]

AL Disaster Number AL–00003

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1605–DR), dated August 29, 2005.

Incident: Hurricane Katrina.

Incident Period: August 29, 2005 through September 26, 2005.

Effective Date: October 5, 2005.

Physical Loan Application Deadline Date: October 28, 2005.

EIDL Loan Application Deadline Date: May 29, 2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Alabama, dated August 29, 2005 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Marengo

Contiguous Counties:

Alabama, Dallas

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–20727 Filed 10–17–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10207 and #10208]

FL Disaster # FL–00010

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated October 4, 2005.

Incident: Hurricane Rita.

Incident Period: September 20, 2005.

Effective Date: October 4, 2005.

Physical Loan Application Deadline Date: December 5, 2005.

EIDL Loan Application Deadline Date: July 5, 2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Monroe

Contiguous Counties: Florida
Collier, Miami-Dade

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.687
Businesses with Credit Available Elsewhere	6.557
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10207 8 and for economic injury is 10208 0.

The States which received an EIDL Declaration # are Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 4, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–20726 Filed 10–17–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10209 and # 10210]

Florida Disaster # FL–00008

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated October 4, 2005.

Incident: Severe Storms and Flooding.

Incident Period: July 29, 2005 through August 14, 2005.

Effective Date: October 4, 2005.

Physical Loan Application Deadline Date: December 5, 2005.

EIDL Loan Application Deadline Date: July 5, 2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Polk

Contiguous Counties: Florida
Hardee, Highlands, Hillsborough, Lake, Manatee, Okeechobee, Orange, Osceola, Pasco, Sumter.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	6.387
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10209 6 and for economic injury is 10210 0.

The States which received an EIDL Declaration # are FLORIDA.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 4, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–20728 Filed 10–17–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5169]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:30 p.m. to 4:30 p.m. on Tuesday, November 1, 2005, in Room 1205, U.S. Department of State, 2201 C Street, NW., Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw. Topics for the meeting are (1) U.S. Priorities in the Doha Development Agenda and (2) Sustainable Energy Development. The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public planning to attend should provide, by October 26, their name, professional affiliation, social security number (or other identification, such as driver's license), date of birth, and citizenship to Gwendolyn Jackson by fax (202) 647–5936, e-mail (*jacksongl@state.gov*), or telephone (202) 647–0847.

For additional information, contact David Freudenwald, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–2231 or *freudenwalddj@state.gov.*

Dated: October 12, 2005.

Laura Faux-Gable,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. 05–20842 Filed 10–17–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 120–XX, ''Program To Enhance Transport Category Airplane Electrical Wiring Interconnection System Maintenance''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC)

that sets forth acceptable methods of compliance with 14 CFR part 25, Appendix H, section H25.5(a)(1). This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 19, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION: *Comments Invited:* Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120–XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion: This proposed AC provides guidance for developing enhanced electrical wiring interconnection system (EWIS) maintenance and inspection procedures in accordance with section H25.5(a)(1) of Appendix H to part 25 of 14 CFR. The guidance provided in this proposed AC is directed to air carriers, air operators, type certificate holders, STC holders, maintenance providers, repair stations, and anyone performing field approval modifications or repairs. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published previously in the **Federal Register**. Issuance of AC 120–XX is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on October 12, 2005.

John M. Allen,

Acting Director, Flight Standards Service, Aviation Safety.

Dorenda Baker,

Acting Director, Aircraft Certification Service, Aviation Safety.

[FR Doc. 05–20851 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Addington Field, Elizabethtown, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), the Federal Aviation Administration is requesting public comment on the Elizabethtown Airport Board's request to change a portion (0.069 acres) of airport property from aeronautical use to non-aeronautical use. The property is to be sold to The Commonwealth of Kentucky for the widening of Kentucky State Highway 1357 (St. John Road).

The 0.069 acres is located approximately 2600 feet northeast of Addington Field Airport Runway 23, at the intersection of St. John and Ring Roads.

DATES: Comments must be received on or before November 17, 2005.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joseph B. Yates, Chairman, Elizabethtown Airport Board at the following address: 1828 Kitty Hawk Drive, Elizabethtown, Kentucky 42701.

FOR FURTHER INFORMATION CONTACT: Tommy L. Depree, Airports Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555, (901) 322–8185. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Elizabethtown Airport Board to release 0.069 acres of aeronautical property at Addington Field, Elizabethtown, Kentucky. The property will be purchased by The Commonwealth of Kentucky for the widening of State Highway 1357 (St. John Road).

A detailed legal description of the property proposed for release can be requested or seen at either of the contacts given above. However, the general description is the 0.069 acres is located approximately 2600 feet northeast of Addington Field Airport Runway 23, at the intersection of St. John and Ring Roads.

The net proceeds from the non-aeronautical use or the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Elizabethtown Airport Board.

Issued in Memphis, Tennessee on October 11, 2005.

Charles L. Harris,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 05–20847 Filed 10–17–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Record of Decision: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability of the Record of Decision following a Final Environmental Impact Statement for transportation improvements in Salt Lake County, Utah.

SUMMARY: The FHWA is issuing this notice to advise the public that a Record of Decision (ROD) has been made following a Final Environmental Impact Statement prepared for the 11400 South Study Area within Salt Lake County, Utah. The ROD approves a location proposed for transportation improvements for the 11400 South Study Area in Salt Lake County, Utah. The 11400 South Study Area includes the area bounded by 12300/12600 South to 10400/10600 South, and Bangerter Highway to 700 East. It includes portions of the cities of Draper, Riverton, Sandy, and South Jordan, Utah.

The Selected Alternative includes a new interchange with Interstate 15 at 11400 South, a new river crossing at

11400 South, and widening 10600 South to six lanes from just west of River Front Parkway to Jordan Gateway. Selection of the Preferred Alternative was based on a comparison of all the alternatives advanced for detailed study in terms of mobility improvements, and environmental, social, economic and Section 4(f) impacts. In addition, the project team considered public and resource agency input and city council recommendations or resolutions regarding the project.

This project requires Federal approval of a proposed new Interstate access and may involve Federal Highway Administration funding as authorized by Title 23 of the United States Code. Consequently, pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Federal Highway Administration (FHWA) in coordination with the Utah Department of Transportation (UDOT), prepared an Environmental Impact Statement (EIS) for the project's impact on the human environment. The Final EIS (FEIS) was issued on June 3, 2005.

Pursuant to Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (23 U.S.C. 139(l)) any person or entity wishing to file a claim for judicial review challenging this decision must do so within 180 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jeffrey Berna, Environmental Specialist, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0078 ext, 235; or Joe Kammerer, Project Manager, Utah Department of Transportation, Region 2, 2010 South 2760 West, Salt Lake City, UT 84104–4592, Telephone: (801) 887–3435. Copies of the FEIS and ROD are available for review at the addresses mentioned above and can be viewed and downloaded from the project Web site *http://www.udot.utah.gov/11400south/*.

Comments or questions concerning this proposed action and the ROD should be directed to the FHWA or UDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations impending Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 13, 2005.

Jeffrey Berna,

Environmental Specialist, Salt Lake City, Utah.

[FR Doc. 05–20777 Filed 10–17–05; 8:45am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2005–21015]

Notice of Request for Reduction in Scope of Application for Approval of Discontinuance or Modification of a Railroad Signal System and Extension of Comment Period

The Central New York Railroad Corporation, Norfolk Southern Corporation, and New York, Susquehanna and Western Railway Corporation have jointly petitioned the Federal Railroad Administration (FRA) requesting a reduction in scope of their original block signal application identified as Docket Number FRA–2005–21015. The joint application is now seeking approval of the proposed discontinuance and removal of the automatic block signal systems, on the two main tracks, between CP Coles, milepost 209.5 and CP BD, milepost 213.0, near Binghamton, New York, a distance of approximately 3.5 miles.

FRA has conducted its own investigation and held a public hearing on September 28, 2005. At this public hearing the involved railroads requested a reduction in scope of the application. In an effort to allow interested parties an opportunity to comment on this reduction in scope of the original application, FRA is extending the comment period in this matter to November 9, 2005.

FRA expects to be able to determine this matter without further oral hearings. FRA may conduct additional oral hearings if a specific request is received. However, any such request for an oral hearing must be accompanied by specific documentation establishing that the party is unable to adequately present his or her position by written statements.

All communications concerning this proceeding should be identified by the docket number (FRA–2005–21015) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued in Washington, DC on October 6, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety, Standards and Program Development.

[FR Doc. 05–20832 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2005–22133

Applicant: Saginaw Bay Southern Railway, Mr. Wilford G. Gamble, Vice President—Operations, 23 Newman Street, P.O. Box 232, East Tawas, Michigan 48730.

CSX Transportation, Incorporated, Mr. N. Michael Choat, Chief Engineer, Communications and Signal, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

The Saginaw Bay Southern Railway (SBS) and CSX Transportation, Incorporated (CSXT) jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single

main track and sidings, between Saginaw Terminal, milepost CC 0.0, near Saginaw, Michigan and Mount Morris, Michigan, milepost CC 26.2, on the CSXT Chicago Division, Saginaw Subdivision. The proposal is that the uses of the existing signal system be waived upon startup by SBS. The signal aspects are to be covered and all power-operated switches disconnected and converted to hand operation; the wayside signals will be subsequently retired and removed as soon as possible after the acquisition by SBS. The proposed method of operation is by TrackAcess, Track Warrant Control, with a maximum authorized speed of 25 mph; all highway-rail grade crossing warning systems will be retained.

The reason given for the proposed changes is that the current traffic density and SBS operating method do not warrant retention of the signal system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 6, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety, Standards and Program Development.

[FR Doc. 05–20835 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 232X)]

Union Pacific Railroad Company—Abandonment Exemption—in Orange County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 1.46-mile line of railroad known as the Tustin Industrial Lead from milepost 514.84 to milepost 516.10 and from milepost 514.70 to 514.90 in the City of Orange, Orange County, CA. The line traverses United States Postal Service Zip Code 92867.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the 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 17, 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 28, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 7, 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 UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Dr., Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 21, 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), UP 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 UP's filing of a notice of consummation by October 18, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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[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 offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.STB.DOT.GOV*.

Decided: October 7, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20587 Filed 10–17–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 12, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 17, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1943.

Type of Review: Extension.

Title: NOT–123059–05, Section 965-Limitations on Dividends Received Deduction and Other Guidance.

Description: This document provides guidance under new section 965, which was enacted by the American Jobs Creation Act of 2004 (P.L. 108–357). In general, and subject to limitations and conditions, section 965(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. This document addresses limitations imposed on the maximum amount of section 965(a) DRD under section 965(b)(1) under which the maximum amount to an eligible dividend is the greatest of $500 million or earnings permanently reinvested outside the United States, section 965(b)(2) regarding certain base-period repatriations, section 965(b)(3) regarding certain increases in related party indebtedness and certain miscellaneous limitations related to the foreign tax credit.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,250,000 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20761 Filed 10–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 17, 2005 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0008.

Type of Review: Extension.

Title: Application and Permits to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid.

Form: TTB form 5170.7.

Description: TTB form 5170.7 is used to document the shipment of taxpaid Puerto Rican article into the U.S. The form is verified by Puerto Rican and U.S. Treasury Officials to certify that products are either taxpaid or deferred under appropriate bond.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 100 hour.

OMB Number: 1513–0024.

Type of Review: Extension.

Title: Export Warehouse Proprietor.

Form: TTB form 5220.4.

Description: Proprietors account for taxable articles on this report. TTB uses this information to ensure that Federal laws and regulations have been complied with and determined taxes have been paid.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,181 hour.

OMB Number: 1513–0033.

Type of Review: Extension.

Title: Manufacturer of Tobacco Products or Cigarette Papers and Tubes.

Form: TTB form 5210.5.

Description: TTB uses this information to ensure that taxes have been properly paid and the Federal laws and regulations are complied with.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,800 hour.

OMB Number: 1513–0037.

Type of Review: Extension.

Title: Withdrawal of Spirits, Specially Denatured Spirits or Wines for Exportation.

Form: TTB form 5100.11.

Description: TTB form 5100.11 is completed by exporters to report the withdrawal of spirits, denature spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 6,000 hour.

OMB Number: 1513–0040.

Type of Review: Extension.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

Form: TTB form 5110.25.

Description: TTB form 5110.25 is completed by proprietors of Distilled Spirits Plants who engage in certain specified types of activities. TTB National Revenue Center personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 20 hour.

OMB Number: 1513–0078.

Type of Review: Extension.

Title: Application for a Permit as a Manufacture of Tobacco Products or an Export Warehouse Proprietor,

Application for an Amended Permit as a Manufacture of Tobacco Products or an Export Warehouse Proprietor; Application for Permit Under 26 U.S.C. Chapter 52, Importer of Tobacco Products and Application for an Amended Permit Under 26 U.S.C. 5712, Importer of Tobacco Products.

Form: TTB form 5200.3, 5200.16, 5230.4 and 5230.5.

Description: These forms are used by the tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products, importer of tobacco products or proprietor of an export warehouse.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Total Burden Hours: 1,130 hour.

Clearance Officer: Frank Foote, (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20762 Filed 10–17–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 12, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 17, 2005 to be assured of consideration.

Bureau of Public Debt

OMB Number: 1535–0091.

Type of Review: Extension.

Title: Regulations Governing U.S. Treasury Securities-State and Local Government Series.

Description: The information is requested to establish an investor account, issue and redeem securities.

Respondents: State or Local Government.

Estimated Total Burden Hours: 542 hour.

Clearance Officer: Vicki S. Thorpe, (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20763 Filed 10–17–05; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–63–84: EE–96–85]

Notice and Request for Comments

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary regulation, EE–63–84 (TD 8073) and notice of proposed rulemaking, EE–96–85, Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984 (§§ 1.505(c)–1T and 1.1042–1T).

DATES: Written comments should be received on or before December 19, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

OMB Number: 1545–0916.

Regulation Project Number: EE–63–84 (temporary regulation) and EE–96–85 (notice of proposed rulemaking).

Abstract: The regulations provide rules relating to effective dates and certain other issues arising under sections 91.223 and 511–561 of the Tax Reform Act of 1984. The regulations affect qualified employee benefit plans, welfare benefit funds, and employees receiving benefits through such plans.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals.

Estimated Number of Respondents: 7,800.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5731 Filed 10–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–C, Contributions of Motor Vehicles, Boats, and Airplanes.

DATES: Written comments should be received on or before December 19, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Contributions of Motor Vehicles, Boats, and Airplanes.

OMB Number: 1545–1959.

Form Number: 1098–C.

Abstract: Section 884 of the American Jobs Creation Act of 2004 (Pub. L. 108–357) added new paragraph 12 to section 170(f) for contributions of used motor vehicles, boats, and airplanes. Section 170(f)(12) requires that a donee organization provide an acknowledgement to the donor of this type of property and is required to file the same information to the Internal Revenue Service. New Form 1098–C may be used as the acknowledgement and it, or an acceptable substitute, must be filed with the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5732 Filed 10–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 27, at 1 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Thursday, October 27, 2005, at 1 p.m. Eastern Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006-MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or fax to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or by fax at 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: October 12, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–5730 Filed 10–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Senior Executive Service Combined Performance Review Board

AGENCY: United States Mint, Treasury Department.

ACTION: Notice of appointment of members to the Combined Performance Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined Performance Review Board (Board) for the United States Mint, the Financial Management Service (FMS), the Bureau of Public Debt (BPD), the Bureau of Engraving and Printing (BEP) and the Alcohol and Tobacco Tax and Trade Bureau (TTB). The Combined PRB reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the five bureaus, except for executives below the Assistant Commissioner level in the FMS. The Combined PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of Combined PRB

The Combined PRB shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Jerry Horton, Associate Director, Chief Information Officer (Acting Deputy Director, United States Mint).

John Manfreda, Administrator, TTB.

Pamela J. Gardiner, Associate Director (Management), BEP.

Cynthia Z. Springer, Assistant Commissioner (Office of Information Technology), BPD.

Judy Tillman, Assistant Commissioner, Regional Operations, FMS.

Alternate Members

Marcia Coates, Senior Advisor, United States Mint.

James Martin Mills, Assistant Commissioner, Debt Management Services, FMS.

Gregory D. Carper, Associate Director, CFO, BEP.

John R. Swales, Assistant Commissioner (Office of Securities Operations), BPD.

Vicky McDowell, Deputy Administrator, TTB.

DATES: Membership is effective on September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry Horton, Associate Director, Chief Information Officer (Acting Deputy Director, United States Mint), United States Mint, 801 9th Street, NW., Washington, DC 20220. Telephone Number: (202) 772–7000.

This notice does not meet the Department's criteria for significant regulations.

Dated: October 12, 2005.

Jerry Horton,

Associate Director, Chief Information Officer, (Acting Deputy Director), United States Mint.

[FR Doc. 05–20828 Filed 10–17–05; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 70, No. 200

Tuesday, October 18, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Refined Sugar Re-Export Program

Correction

In notice document 05–19577 appearing on page 57250 in the issue of September 30, 2005, make the following correction:

On page 57250, in the first column, in the 17th line, ''can'' should read ''cane''

[FR Doc. C5–19577 Filed 10–17–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 18, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Alameda Whipsnake; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT93

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Alameda Whipsnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 203,342 acres (ac) (82,289 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California.

DATES: We will accept comments from all interested parties until December 19, 2005. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 2, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room 2605, Sacramento, California 95825–1846.

2. You may hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address.

3. You may send comments by electronic mail (e-mail) to *alameda_whipsnake@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office at (916) 414–6712.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room 2605, Sacramento, California 95825–1846 (telephone (916) 414–6600).

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Listing Branch Chief, Sacramento Fish and Wildlife Office, at the address or telephone number above.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the subspecies due to designation;

(2) Specific information on the amount and distribution of Alameda whipsnake habitat and occurrence records, and what habitat features are essential to the conservation of the subspecies and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information regarding the benefits of excluding specific lands from, or including specific lands in, the designation of critical habitat including but not limited to, State lands contained within the Mount Diablo State Park in Contra Costa County; Department of Energy lands in Alameda and San Joaquin Counties; and Bureau of Land Management lands within Contra Costa County, including specific information about existing management plans in place for these lands, and the provisions of such plans for the conservation of the Alameda whipsnake and its habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed and/or final designation of critical habitat and, in particular, any impacts on small entities; and

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *alameda_whipsnake@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Alameda whipsnake'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at (916) 414–6600. Please note that the Internet address (*alameda_whipsnake@fws.gov*) will be closed out at the termination of the public comment period.

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 rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

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 466 species or 37 percent of the 1,268 listed species in the United States under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,268 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 State Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected 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 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) (42 U.S.C. 4321–4347). 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

Subspecies Description

The Alameda whipsnake is a member of the family Colubridae (Stebbins 1985), and one of two subspecies of *Masticophis lateralis.* The Alameda whipsnake is a slender, fast-moving, diurnally active snake with a slender neck, broad head, and large eyes. Alameda whipsnakes range from 3 to 4 feet (ft) (91 to 122 centimeters (cm)) in length. The Alameda whipsnake is distinguished from the more common chaparral whipsnake (*Masticophis lateralis lateralis*) by a sooty black back area, wider yellow-orange stripes that run laterally down each side, the lack of a dark line across the scale near the tip of the nose, an uninterrupted light stripe between the tip of the nose and eye, and the virtual absence of spotting on the underside of the head and neck. For more information on the Alameda whipsnake, refer to the final listing rule and previous final critical habitat designation published in the **Federal Register** on December 5, 1997 (62 FR 64306), and October 3, 2000 (65 FR 58933), respectively.

Life History

Members of the genus *Masticophis* are slender, fast-moving, diurnal snakes with a broad head, large eyes, and slender neck. When hunting, these snakes commonly move with the head held high and occasionally move it from side to side, possibly to aid in depth perception. Prey is seized with great speed, pinioned under loops of the body, and engulfed without constriction. The Alameda whipsnake is a lizard-eating specialist, although its diet may include other prey (e.g.), rattlesnakes and nesting birds) depending on an individual's size, sex, age, and location. These snakes are good climbers that can escape into scrub or trees. Additionally, they seek shelter in rock piles, outcrops, or small mammal burrows (Stebbins 1985).

In a study of the thermal responses of the Alameda whipsnake, Hammerson (1979) observed that snakes emerged from burrows in the morning with a low body temperature, often exposing just the head first, then basking in full or partial sun until they reached a body temperature of 91.4 to 93.4 degrees Fahrenheit (33.0 to 34.1 degrees Celsius). Alameda whipsnakes maintained a high body temperature (compared to other snakes) during the day, and retreated to burrows when soil surface temperatures began to fall. Alameda whipsnakes have a higher degree of body temperature stability than other snakes (Swaim 1994). Alameda whipsnakes maintain this high, stable body temperature by using open and partially open and or low growing shrub communities that provide cover from predators. Alameda whipsnakes require a mosaic of sunny and shady areas to regulate their body temperature.

Swaim (1994) used trapping and radio telemetry to study several aspects of Alameda whipsnake life history at multiple sites in Alameda and Contra Costa counties. Adult snakes had a bimodal seasonal activity pattern with peaks during the spring mating season and a smaller peak during late summer and early fall. Although short, above-ground movements may occur during the winter, Alameda whipsnakes generally retreat in November into a hibernaculum (i.e.), a protective site where the snakes remain over the

winter) and emerge in March. Courtship and mating were observed from late March through mid-June. During this time males move around throughout their home ranges, but females appear to remain at or near their hibernacula where mating occurs. The home range of a male Alameda whipsnake ranged from 4.7 to 21.5 ac (1.9 to 8.7 ha) in size (mean of 13.6 ac (5.5 ha), n = 4), and showed a high degree of spatial overlap. Suspected egg-laying sites for two female snakes were located in grassland with scattered shrub habitat. Similarly, recent trapping studies have documented captures of spent females (*i.e.*, morphologically identifiable as having recently laid eggs) within scrub communities (Swaim 2002a), suggesting that these areas are in close association with egg-laying sites. Typically, clutches of 6 to 11 eggs are laid between May and July (Stebbins 1985), with young hatching and emerging in late summer to early fall (Swaim 1994). These hatchlings have been seen and captured above ground from August through November. Prey items were occasionally detected in the stomachs of captured hatchlings during this period, indicating that some hatchlings feed prior to winter hibernation.

Three individual snakes monitored by Swaim (1994) for nearly an entire activity season appeared to maintain stable home ranges. Movements of these individuals were multi-directional and individual snakes returned to specific areas and retreat sites after long intervals of nonuse. Snakes had one or more core areas (i.e., areas of concentrated use) within their home range as described above, with large areas of the home range receiving little use.

Geographical Range

The Alameda whipsnake currently inhabits the inner coast range mostly in Contra Costa and Alameda counties (Jennings 1983; McGinnis 1992; Swaim 1994), with additional occurrence records in San Joaquin and Santa Clara counties (CNDDB 2005; Swaim 2004). Compared to the much more common chaparral whipsnake, the Alameda whipsnake subspecies historic range has always had a very restricted distribution. The subspecies historic range most likely included the entirety of the coastal scrub and oak woodland communities throughout the East Bay in Contra Costa, Alameda, and parts of San Joaquin and Santa Clara counties (McGinnis 1992). The current distribution of the subspecies has been reduced from the known historic range to five separate areas with little or no interchange due to habitat loss, alteration, and fragmentation. The five populations remain centered in: (1) Sobrante Ridge, Tilden/Wildcat Regional Parks to the Briones Hills, in Contra Costa County (Tilden-Briones population); (2) Oakland Hills, Anthony Chabot area to Las Trampas Ridge, in Contra Costa County (Oakland-Las Trampas population); (3) Hayward Hills, Palomares area to Pleasanton Ridge, in Alameda County (Hayward-Pleasanton Ridge population); (4) Mount Diablo vicinity and the Black Hills, in Contra Costa County (Mount Diablo-Black Hills population); and (5) Wauhab Ridge, Del Valle area to the Cedar Mountain Ridge, in (Sunol-Cedar Mountain population). For more information on the current distribution of the subspecies, refer to the **Federal Register** notices listing the species on December 5, 1997 (62 FR 64306) and the previous designation of critical habitat on October 3, 2000 (65 FR 58933).

Habitat

The distribution of the Alameda whipsnake coincides most closely with scrublands broken by grassy patches, and rocky hillsides (Stebbins 1985). Recent telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on scrub plant communities, Alameda whipsnakes frequently venture out into adjacent habitats, including grassland, oak savannah, and occasionally oak-bay woodland. The Alameda whipsnake occurs typically within a mosaic of habitat types containing scrub/shrub (chamise-redshank chaparral, mixed chaparral, coastal scrub) communities, with a significant component of annual grassland, as well as other wooded habitats such as blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, and riparian communities (Sawyer and Keeler-Wolf 1995; Mayer and Laudenslayer 1988; CDFG 1998) or rock outcrops. Alameda whipsnakes exhibit a preference for open-canopy stands and habitats with woody debris and exposed rock outcrops because these habitats provide areas for basking, cover from predators, and an ample source of prey. Until recently, Alameda whipsnakes were most often found on southeast, south, and southwest facing slopes (McGinnis 1992; Swaim 1994). Swaim (1994) reported that Alameda whipsnakes have been shown to travel distances greater than 500 ft (152.5 meters (m)) over grassland and other vegetation types and communities to exposed rock outcrops.

However, additional study has established that concentrated activity and/or movement occurs on all slope aspects, including northern exposures, riparian areas (e.g. stream corridors), and through both open and closed canopy woodlands (Swaim 2000; Swaim 2002b; Swaim 2004; Swaim 2005b–d). Recent data from incidental sighting on free-ranging Alameda whipsnakes and recapture trapping surveys show regular use of habitats a distance of greater than 656 ft (200 m) from scrub and chaparral and include observations of Alameda whipsnakes up to 23,950 yards (yd) (7,300 m) from scrub (Swaim 2003; Swaim 2004; Swaim 2005b), and movement of marked snakes of several thousand feet (meters) (Swaim 2005c) in a matter of 4 to 10 days.

Telemetry data indicate that Alameda whipsnakes remain in grasslands for periods of several hours to weeks at a time (Swaim 1994). Grassland habitats are extensively used by male Alameda whipsnakes during the spring mating season. Female Alameda whipsnakes use grassland areas after mating, possibly in search of egg-laying sites.

Rock outcrops are considered an important feature of Alameda whipsnake habitat because they provide shelter and potential hibernacula. Rock outcrops also support lizard populations. Lizards, especially the western fence lizard (Sceloporus occcidentalis), are a major prey item of Alameda whipsnakes (Stebbins 1985; Swaim 1994). Most telemetered locations of Alameda whipsnakes were within rock outcrops and talus.

Threats

Current threats to Alameda whipsnake habitat are urban development and associated impacts that result from increased human population densities, fire suppression and resulting likelihood of catastrophic wildfires, increased predation pressure, and incompatible grazing practices. McGinnis (1992) identified the loss of large blocks of prime habitat due to relatively recent urban development as the principle reason for the decline in the subspecies. The central and western portions of Alameda and Contra Costa counties are highly urbanized and continue to be subjected to increased urbanization. Habitat fragmentation from urban development and associated infrastructure (e.g., highway and road construction) has led to isolation of the five populations by wholly preventing or severely reducing movement of individuals between each of the areas occupied by the five populations. Consequently, these activities have reduced the total amount of habitat available for the Alameda whipsnake.

Previous Federal Action

On December 5, 1997, we published a final rule listing the Alameda whipsnake as threatened (62 FR 64306). On October 3, 2000, we published a final rule designating critical habitat for the Alameda whipsnake within Alameda, Contra Costa, San Joaquin, and Santa Clara counties (65 FR 58933).

On June 7, 2001, the Home Builders Association of Northern California and others filed a lawsuit in the Eastern District of California against the Service, challenging the final designation of critical habitat for the Alameda whipsnake (*Home Builders Association of Northern California, et al.* v. *U.S. Fish and Wildlife Service, et al.*, CV F 01–5722 AWI SMS). On May 9, 2003, the U.S. District Judge vacated and remanded the October 3, 2000, final rule designating critical habitat for the Alameda whipsnake. On January 14, 2004, the Service was ordered to complete and publish a proposed rule on critical habitat designation for the Alameda whipsnake no later than October 1, 2005, and to complete and publish a final rule no later than October 1, 2006. For more information on previous Federal actions concerning the Alameda whipsnake, refer to the final listing rule published in the **Federal Register** (62 FR 64306).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

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 data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

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) of the Act.) 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 geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and 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 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic and may change over time due to vegetational succession, climate, or catastrophic events (e.g., fire, landslides). As a result of habitat change a 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 use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Alameda whipsnake, including information gathered for the Draft Recovery Plan, information from local subspecies experts, published and unpublished research papers (e.g., peer-reviewed journal articles in the public domain), academic theses, abstracts of presentations at scientific meetings, notes from our attendance at such presentations, consultation with recognized experts in the field, and review of case studies of other critical habitat designations. We assembled the

best and most recently available information on soil, vegetation, Alameda whipsnake records, topography, urban development, road systems, and aerial imagery, into a Geographic Information Systems (GIS) database. We are not proposing to designate any areas as critical habitat that lie outside the geographical area presently occupied by the subspecies.

We have also reviewed available information that pertains to the habitat requirements of this subspecies, including reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; and regional GIS coverages.

As mentioned in the Habitat and Primary Constituent Elements sections, Alameda whipsnakes have the capability and need for long range movement. These movements are essential for establishment of home ranges, finding retreats, maintenance of gene flow, recolonization of habitat, relocation in response to disturbance, and finding mates. Such movements have been documented by observation of snake distance from scrub habitat (Swaim 2003) and tracking of snake movements (Swaim 2005 b–d), and are well within the general range as exemplified by other snake species in the same family (Loughheed *et al.* 1999; Blouin-Demers and Weatherhead 2002). Habitat determined to be occupied included that habitat between recorded observations within the capable and necessary range of movement, which has relatively high quality habitat for the Alameda whipsnake, PCEs, and other factors (see Criteria for Identification of Critical Habitat, below). Only such occupied habitat has been considered in the designation of critical habitat for this subspecies. All proposed units were occupied at the time of listing and are currently occupied by the Alameda whipsnake.

A GIS database was constructed to overlay key layers which served as indices of habitat quality. The critical habitat boundary was adjusted as warranted by major landforms and features (*e.g.*, ridgelines, water courses), soils, development, distance from known records, and barriers to movement.

We determined that soil type could be employed to distinguish those areas most likely to support Alameda whipsnake and/or its PCEs. To determine suitability, soils were ranked by the number of Alameda whipsnake records falling within individual soil types. We decided to map those soil layers with a minimum of three Alameda whipsnake records. Because of the inherent biases in Alameda whipsnake data collection techniques, we believe this criterion does not over-represent areas with a single observation, nor under-represent those areas that had numerous records as a consequence of more frequent scientific study. The soil types associated with three or more Alameda whipsnake records included rock outcrop, wisflat-arburua-san timoteo complex, various types of loams, rocky loams, clay loams, and silt loams, and riverwash. Although rock outcrops and rocky soils accounted for a disproportionate number of Alameda whipsnake observations, multiple Alameda whipsnake records were also associated with other soil types. Many of the same soils associated with multiple Alameda whipsnake records are also associated strongly with chaparral or coastal scrub. Thus, soil type associated with multiple Alameda whipsnake records was considered a useful indicator of the presence of appropriate vegetation and rocky land or talus.

Vegetation quality was evaluated by examining the distribution and pattern of the grassland and woodland vegetation types used by Alameda whipsnake. Two primary sources were used: (1) The GIS-based land-cover map for California (California GAP Analysis 1998), and (2) visual inspection of digital aerial imagery from several sources. The visual inspection was necessary because the mapping unit for the GAP is relative large (*i.e.*, 100 ha) and because of a somewhat restrictive GAP mapping criterion (designations reflect a dominant canopy species, *i.e.*, greater than 20 percent). In some cases, vegetation very similar in appearance to chaparral could be seen in the aerials but was not reported as dominant in the GAP layer. Much smaller amounts of chaparral are likely to be distributed more widely, but could not be detected with either the GAP or aerial imagery layers. In general, habitat quality was deemed to be higher where all PCEs were present in abundance, and where the vegetation consisted of a more finely dissected mosaic. Additionally, areas which had chaparral were considered of greater importance because of the stronger association of snake records with this vegetation type. Quantitative limits for average patch dimension and/or minimum amount of chaparral were not established due to the varying size of chaparral known to support the Alameda whipsnake.

We also examined the digital imagery for roads, structures, cultivation, or other disturbances that would affect habitat quality for Alameda whipsnake. Some areas were not included as critical habitat because the level of such disturbance was determined to be high to support the Alameda whipsnake over time.

Criteria Used To Identify Critical Habitat

The criteria we utilized to designate critical habitat for Alameda whipsnake are based on the best scientific information available about the biology and ecology of the subspecies. In our determination of critical habitat for the Alameda whipsnake, we selected areas that possess the physical and biological features essential to the conservation of the subspecies and that may require special management considerations or protection. Application of these criteria (1) protects the best quality habitat in areas where Alameda whipsnake occurs; (2) maintains the current geographical, elevational, and ecological distribution of habitat and the subspecies, thereby preserving genetic variation within the range of the Alameda whipsnake, and minimizing the effects of local extinction; (3) minimizes fragmentation by establishing unit boundaries that would result in the lowest possible ratio of perimeter/unit area, maintaining the essential need for snake movement, dispersal, and interaction within the population. The specific habitat quality factors that we considered in determining critical habitat included soil type, vegetation type, vegetation mosaic, and degree of included development (e.g., roads, structures).

There is no firm information on the actual population of Alameda whipsnake within its range. In addition, there has been no analysis of the minimum viable population size necessary to maintain a stable or increasing population of Alameda whipsnake. However, expert opinion is that the subspecies persists in relatively low numbers throughout its range (McGinnis 1992). Moreover, irretrievable loss of occupied Alameda whipsnake habitat due to recent urban development is significant in areas adjacent to several of the proposed critical habitat units. This development has likely resulted in a commensurate reduction in population size for the Alameda whipsnake. Accordingly, the general pattern of habitat loss and fragmentation was taken into consideration in the designation of critical habitat.

Connectivity has been applied as a criterion to those areas where designation would result in a relatively high potential for dispersal between and within units. The need for special

management considerations was applied where such management may be essential to enhance the connectivity or the integrity of high quality habitat within a unit.

We are proposing to designate critical habitat on lands that we have determined are occupied at the time of listing and that contain the features found to be essential to the conservation of the Alameda whipsnake (PCEs). Within the boundaries of critical habitat, land that contains developed areas such as buildings, paved areas, and other structures has been excluded from this designation.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (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 implementation agreement (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. We are proposing to exclude critical habitat from portions of Unit 4 based on the development of the draft East Contra Costa County HCP and lands within the East Bay Regional Park District. See Relationship of Critical Habitat to the Draft East Contra Costa County Habitat Conservation Plan (ECCHCP) below.

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 (PCEs) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The specific PCEs essential for the conservation of the Alameda whipsnake are derived from the biological and ecological needs of the Alameda whipsnake as described in the Background section of this proposal and in previous listing and critical habitat rules for the species, as well as derived from the abiotic and biotic needs of the species as described below.

The specific feeding and foraging habits of Alameda whipsnake are relatively well known (Stebbins 1985; Swaim 1994; Green 1998). Alameda whipsnake prey extensively on western fence lizards (*Sceloporus occidentalis*), but also have been known to prey on western skinks (*Eumeces skiltonianus*), as well as frogs, birds, and other snakes (Stebbins 1985; Swaim 1994). Its specialization on lizard prey and mode of foraging require areas that both support abundant prey populations and provide prey-viewing and capture opportunities. The Alameda whipsnake is most frequently recorded in close association with chaparral or scrub patches. These patches serve as the center of home ranges, and provide for concealment from predators and prey-viewing opportunities while foraging. Snakes venture into adjacent grasslands or wooded habitats that exhibit, at a minimum, a partially open canopy. The open canopy character is believed to allow both development of the primary lizard prey base used by the snake, and efficient thermoregulation and foraging activities. The Alameda whipsnake hunts by sight, holding its head off the ground to peer over grass or rocks for potential prey capture opportunities. Essential features of Alameda whipsnake habitat must therefore include consideration of the habitat needs of the prey species and for prey captures. Such opportunities, as well as the prey base, are provided for by what is termed a ''scrub community.'' The particular arrangement of the landscape mosaic that supports Alameda whipsnake commonly consists of scrub patches within an open canopy of interspersed grasslands and rocklands, but may include closed or nearly closed scrub areas, including rocklands, and a much lower complement of grasses. Typical scrub communities within the range of the Alameda whipsnake include diablan sage scrub, coyote bush scrub, and chamise chaparral (Swaim 1994), also classified as coastal scrub, mixed chaparral, and chamise-chaparral (Mayer and Laudenslayer 1998), and chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998). These vegetation series are characterized as being less than 20 ft (6 m) in height with sparse ground cover (the interior live oak shrub vegetation series having variable ground cover) and form a nearly continuous cover of closely spaced shrubs often with intertwining branches. Sufficient light penetrates through the canopy to support a herbaceous understory. The soils are usually nutrient poor and rocky, and stands are best developed on steep slopes. Because of complex patterns of topographic, edaphic, and climatic variations, these vegetation series form a mosaic pattern with inclusions of other vegetation series (blue oak, coast live oak, California Bay, California buckeye, California annual grassland) or open spaces. The percentage cover for these vegetation series is variable depending on species composition and aspect. Bare zones about 3 ft (1 m) wide may be interspersed within these vegetation series and extend around and out into adjacent vegetation series. These vegetation series occur on all slope aspects with patch sizes varying from square feet (meters) to square miles (kilometers) in dimension. The plant species associated with these vegetation series include, but are not limited to: chamise (*Adenostoma* sp.), manzanita (*Artostaphylos* sp.), *Ceanothus* sp., buckwheat (*Eriogonum* sp.), bush monkey flower (*Diplacus* sp.), toyon (*Heteromeles arbutifolia*), scrub oak (*Quercus* sp.), interior live oak (*Q. wislizenii*), canyon live oak (*Q. chrysolepis*), California coffeberry *Rhamnus* sp.), California buckeye (*Aesculus californica*), poison oak (*Toxicodendron diversilobum*), yerba santa (*Eriodictyon californicum*), and mountain mahogany (*Cercocarpus* sp.).

Swaim (1994) found that core areas (i.e., areas of concentrated use by Alameda whipsnakes, based on telemetry and trapping data) were predominantly located on east, southeast, south, or southwest facing slopes and were characterized by open or partially-open canopy or grassland within 500 ft (150 m) of scrub. In early studies, Alameda whipsnakes were captured primarily where the canopy cover was open (less than 75 percent cover) or partially open (75 to 90 percent cover). However, more recent trapping efforts have collected Alameda whipsnakes in scrub ranging from nearly complete or completely closed canopies, to very open canopies with a

few patches of high quality scrub present (Swaim 2005b). These core areas provide sun-shade mosaics that offer an opportunity for the snake to achieve temperatures necessary for foraging, while providing retreat from predators (Swaim 1994). The open scrub habitat supports prey viewing opportunities, aiding foraging opportunities for this diurnal sight-hunting snake (Swaim 1994). As previously mentioned, capture of spent females within scrub communities (Swaim 2002a) indicates scrub areas are in very close association with egg-laying sites, probably located in nearby grassland. Because they provide the primary foraging, breeding, and shelter areas for Alameda whipsnake, scrub communities are considered a PCE essential to the conservation of this subspecies.

Although much of Alameda whipsnake activity occurs in scrub communities, other types of vegetation are also used for foraging and are necessary for normal behavior, breeding, reproduction, population interaction, and dispersal. Core areas used by the snake can be sustained by very small patches of scrub embedded within a larger mosaic of other dominant vegetation types (Swaim 2005b). Our review of available vegetation data and aerial imagery indicate that much of the distribution of Alameda whipsnake does not consist of large unbroken tracts of scrub community. The vegetation types adjacent to the scrub habitat that the Alameda whipsnake needs for foraging, dispersal, and population interactions include annual grassland, blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, eucalyptus, redwood, and riparian communities (e.g. stream corridors). McGinnis (1992) has documented Alameda whipsnakes using oak woodland/grassland habitat as a corridor between stands of northern coastal scrub.

Grassland habitats are used extensively by both sexes of Alameda whipsnake during the breeding season. Males used these areas most extensively during the spring mating season, possibly in search and selection of mates (Swaim 1994). Female use occurred after mating, possibly looking for egg laying sites or for dispersal to scrub habitat (Swaim 1994, Swaim 2002a). Specifically, concentrated activity of gravid females, and hence the suspected location of egg laying sites, was in grassland areas with scattered shrubs within 10 to 20 ft (3 to 6 m) of true scrub habitat (Swaim 1994).

Embedded within these scrub communities and adjacent habitats are areas consisting of rocky habitat (either rock outcrops or rock debris piles, known as ''talus'') and small rodent burrows; however, brush piles and deep soil crevices are also used by the snake (Swaim 1994). These areas are essential for normal behavior, breeding, reproduction, dispersal, and foraging because they provide shelter from predators, egg laying sites, over night retreats, and winter hibernacula (Swaim 1994) and are associated with areas that have increased numbers of foraging opportunities (Stebbins 1985; Swaim 1994). Swaim (1994) found rock outcrops were typically abundant in core areas and observed Alameda whipsnakes mating in these outcrops. During the mating season females remain near the retreat sites while males disperse throughout their home ranges (Swaim 1994). Hammerson (1979 in litt.) observed Alameda whipsnake emerging from burrows in the morning, basking in the sun, and retreating into burrows when the soil surface temperatures began to fall. Alameda whipsnakes retreat into winter hibernacula (e.g. rodent burrows, crevices between rocks) around November and emerge in March. Trapping of gravid females close to scrub communities in grassland with scattered shrubs (Swaim 1994) and spent females in true scrub communities (Swaim 2002a) suggests that rock outcrops, talus, and burrows (mating habitats) need to be relatively close to scrub and nearby grassland habitat (suspected egg laying habitats).

Dispersal habitats are essential for the conservation of Alameda whipsnake. Protecting the ability of Alameda whipsnake to move freely across the landscape in search of habitats is essential for: (1) Sustaining populations by providing opportunity for movement and establishment of home ranges by juvenile recruits, (2) maintaining gene flow by the movement of both juveniles and adults between subpopulations, and (3) allowing recolonization of habitat after fires or other natural events that have resulted in local extirpations. The available information on movements of other colubrid snakes is limited to a small minority of species, but indicates a general potential for significant mobility. Loughheed *et al.* (1999) found evidence of substantial genetic exchange among local hibernacula greater than 3.75 miles (6 km) apart, although gene flow over distances of 6.25 miles (10 km) and greater appears to be substantially less. Based on extensive radio-tracking data, Blouin-Demers and Weatherhead (2002) found that male and female ratsnake (*Elaphe obsolete*) (a species similar in size and characteristics to the Alameda whipsnake) travel up to 5 miles (8 km) from hibernacula to mate. Therefore, it is likely that medium-sized species of this group, such as the Alameda whipsnake, move between areas up to a few miles apart. This is consistent with the distribution of vegetation types in portions of the Alameda whipsnake range, where the vegetation often has more dense closed canopy on the northeast-facing slopes, and less dense open canopy on southwest-facing slopes. Very recent trapping data has shown several instances of snakes residing in and moving through predominantly north-facing slopes in two of the six proposed units (Swaim 2005c, Swaim 2005d). Habitat with a more open canopy would provide the greatest range of essential functions. However closed-canopy areas are considered essential because they provide avenues of dispersal and interaction between sub-populations, and movement through such closed-canopy areas has been documented (Swaim 2002b).

Additional trapping data has shown the maximum distance between Alameda whipsnake observations from the nearest scrub is much larger, up to 4.5 miles (7.3 km), than either the home range diameter or average movements, suggesting more extensive use of grassland for either foraging or corridor movement (Swaim 2000; Swaim 2003; Swaim 2005b). The scale of these grassland patches is on the order of several miles (kilometers) across, and movement of this degree would permit Alameda whipsnakes to disperse to other adjacent habitat. Large blocks of contiguous habitat, relatively uninterrupted by roads, structures, or other development, fulfills the essential need for interchange and interaction among individuals and subpopulations within the limited distribution of Alameda whipsnake. Thus, other vegetation (e.g., annual grassland, blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, eucalyptus, redwood, and riparian communities) adjacent to scrub habitat is considered a feature essential to the conservation of the Alameda whipsnake.

The characteristics and composition of the vegetation series adjacent to scrub or rocky habitats which are used by Alameda whipsnake for foraging, short and long distant dispersal, and mating can be variable depending on location, topography, soils, and rainfall. The woodland vegetation series are comprised of slow growing, long-lived deciduous and evergreen trees 15 to 70 ft (4 to 21 m) tall with a mixed

understory of grass and herbaceous vegetation or shrub vegetation. Some common species associated with the woodland vegetation series include: blue oak (*Quercus douglassi*), valley oak (*Quercus lobata*), canyon live oak, California black oak (*Quercus kellogi*), interior live oak, madrone (*Arbutus menziesii*), foothill pine (*Pinus sabatiana*), California bay, California buckeye, coyote brush, manzanita, gooseberry (*Ribes* sp.), redwood (*Sequoia sempervirens*), and *Eucalyptus* sp. Some common species associated with the California annual grassland vegetation series include: wild oats (*Avena* sp.), soft chess (*Bromus mollis*), brome sp., barley (*Hordeum* sp.), and fescue (*Festuca* sp.). Some remnant perennial grasses may also be distributed within this grassland vegetation series comprised of species such as needlegrass (*Nassella* sp.), California onion grass (*Melica californica*), and California fescue (*Festuca californica*). Herbaceous vegetation within the woodland and grassland vegetation series includes filaree sp., turkey mullein (*Eremocarpus* sp.), popcorn flower (*Plagiobothrys* sp.), and California poppy (*Eschscholtzia california*).

Primary Constituent Elements for the Alameda Whipsnake

Based on our current knowledge of the life history, biology, and ecology of the Alameda whipsnake and the requirements of the habitat necessary to sustain the essential life history functions of the subspecies, we have determined that the primary constituent elements for the Alameda whipsnake are:

(1) *Scrub/shrub communities with a mosaic of open and closed canopy:* Scrub/shrub vegetation dominated by low to medium-stature woody shrubs with a mosaic of open and closed canopy as characterized by the chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998), occurring at elevations from sea level to approximately 3,850 ft (1,170 m). Such scrub/shrub vegetation within these series form a pattern of open and closed canopy which is used by the Alameda whipsnake to provide shelter from predators, temperature regulation by providing sunny and shady locations, prey-viewing opportunities, and nesting habitat and substrate. These features contribute to support a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds.

(2) *Woodland or annual grassland plant communities contiguous to lands containing PCE 1:* Woodland or annual grassland vegetation series comprised of one or more of the following: blue oak, coast live oak (*Quercus* sp.), California bay (*Umbellularia californica*), California buckeye, and California annual grassland vegetation series (as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998)) are PCE 2. This mosaic of vegetation supports a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds and provides opportunities for: (1) Foraging by allowing snakes to come in contact with and visualize, track, and capture prey (especially western fence lizards along with other prey such as skinks, frogs, birds); (2) short and long distance dispersal within, between, or to adjacent to areas containing essential features (i.e., PCE 1 or PCE 3); and (3) contact with other Alameda whipsnakes for mating and reproduction.

(3) *Lands containing rock outcrops, talus, and small mammal burrows.* These areas are used for retreats (shelter), hibernacula, foraging, dispersal, and provide additional prey population support functions.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the features essential to the conservation of the whipsnake that have been identified as PCEs that may require special management considerations or protections. Special management is required when threats to the species and features essential to its conservation exist and must be reduced by management to conserve the species. The greatest threat to all six units is continued urban development, which destroys and fragments the features essential to the conservation of the subspecies and thus the habitat used by the Alameda whipsnake. Second, fragmentation and destruction of features essential to the conservation of the subspecies and thus the habitat also results from road development and widening in all six units. Third, the features essential to the conservation of the subspecies are threatened directly and indirectly by the effects of fire suppression. Fire suppression exacerbates the effects of wildfires through the buildup of fuel (i.e., underbrush and woody debris), creating conditions for slow-moving, hot fires that completely burn all sources of cover for the Alameda whipsnake. Highest intensity fires occur in the summer and early fall, when accumulated fuel is abundant and dry. During this period, hatchling and adult Alameda whipsnakes are aboveground (Swaim 1994), resulting in populations being more likely to sustain heavy losses from fires. Fire suppression has led to the encroachment of non-indigenous and ornamental trees into grassland habitats, further increasing flammable fuel loads in and around Alameda whipsnake habitat. Fire suppression has also lead to the change of scrub communities from open/closed mosaics to closed canopy stands. As described above, Alameda whipsnakes prefer scrub communities consisting of an open/closed mosaic. The closed scrub canopy also results in a buildup of flammable fuels over time (Parker 1987). Special management would be required to properly manage fuel load and prevent catastrophic fire within the six units.

Finally, the features essential to the conservation of the subspecies and thus the habitat within all six units are subject to increased predatory pressure from introduced species, such as rats (*Rattus* spp.), feral pigs (*Sus scrofa*), and feral and domestic cats (*Felis domestica*) and dogs (*Canis familiaris*). These additional threats become particularly acute where urban development immediately abuts Alameda whipsnake habitat. A growing movement to maintain feral cats in parklands is an additional potential threat to the Alameda whipsnake. The East Bay Regional Park District (EBRP) is currently facing public pressure to allow private individuals to maintain feral cats on park lands (DelVecchio 1997). Although the actual impact of predation under such situations has not been studied, feral cats are known to prey on reptiles, including yellow racers (*Coluber* sp. (Hubbs 1951)), a fast, diurnal snake closely related to the Alameda whipsnake (Stebbins 1985). Alameda whipsnakes may be adversely affected in areas that lie adjacent to urban development because of the associated loss of cover habitats in combination with increased native and nonnative predators using these areas. Special management of nonnative predators would be required within all six units.

Proposed Critical Habitat Designation

We are proposing six units as critical habitat for the Alameda whipsnake. The critical habitat areas described below constitute our assessment of areas that have been determined to be occupied at the time of listing, that contain the PCEs, and that may require special management. The six areas proposed for designation as critical habitat for the Alameda whipsnake are described below.

Table 1 below provides the approximate area (ac/ha) determined to be essential to the Alameda whipsnake and the area proposed for exclusion from the final critical habitat designation by unit.

TABLE 1.—AREAS WITH ESSENTIAL FEATURES FOR THE ALAMEDA WHIPSNAKE AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION.

Unit	Area with essential features		Area Proposed for exclusion from the Final Critical Habitat Designation	
	ac	ha	ac	ha
1	34,119	13,808	8,108	3,281
2	24,524	9,925	4,408	1,784
3	27,551	11,150	404	163
4	69,598	28,165	46,306	18,739
5A	24,723	10,005	246	100
5B	18,214	7,371	361	146
6	4,612	1,866	272	110
Total	203,342	82,289	60,105	24,323

The approximate area encompassed within each proposed critical habitat unit by ownership is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR ALAMEDA WHIPSNAKE

[Area (ac/ha) estimates reflect all land within critical habitat unit boundaries]

Unit	Federal		State		Local		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
1					8,108	3,281	26,012	10,527	34,119	13,808
2					4,408	1,784	20,116	8,141	24,524	9,925
3					404	164	27,146	10,986	27,551	11,149
4	61	25	13,873	5,615	3,641	1,474	52,022	21,053	69,598	28,165
5A	2,492	1,009			246	99	21,986	8,897	24,723	10,005
5B					361	146	17,854	7,225	18,214	7,371
6					272	110	4,340	1,756	4,612	1,867
Total	2,553	1,033	13,873	5,615	17,440	7,057	169,476	68,584	03,342	82,289

We present brief descriptions of all units, and reasons why they are essential for the conservation of the Alameda whipsnake below.

Unit 1: Tilden-Briones; Alameda and Contra Costa Counties (34,119 ac (13,808 ha))

Unit 1 is bordered approximately by State Highway 4 and the cities of Pinole, Hercules, and Martinez to the north; by State Highway 24 and the City of Orinda Village to the south; Interstate 80, and the cities of Berkeley, El Cerrito, and Richmond, to the west; and Interstate 680 and the City of Pleasant Hill to the east. Unit 1 is connected to Unit 6 to the south. Land ownership within the proposed unit includes approximately 8,108 ac (3,281 ha) of East Bay Regional Park (EBRP) lands with the remainder of land being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

The unit contains a complex mosaic pattern of grassland with woody scrub vegetation of several types (PCE 1 and PCE 2) as well as rock outcrops or other talus features (PCE 3) which are uniformly distributed throughout the unit with little habitat fragmentation. Alameda whipsnake records occur within the unit and are also uniformly distributed with the dates of Alameda whipsnake records spanning a time period ranging from before the subspecies' listing to after the time of listing (1986-present). Very limited development or habitat fragmentation is present, with the exception of a few structures presumably associated with livestock management. The distribution of essential features throughout the unit allows Alameda whipsnake populations to utilize and freely disperse within the unit, making the overall population less vulnerable to local extinction which could result from fire, landslide, or some other natural event (*e.g.* drought, disease). The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied, and represents the northwestern portion of the subspecies range and one of five population centers. The special management actions which may be required within the unit include

prescribed burns, and management of grazing activities to maintain a mosaic of open habitat. Additional special management which may be required for this unit includes management of trespass, unauthorized trail construction, dumping, feral animal control and other activities associated with urban interface.

Unit 2: Oakland–Las Trampas; Contra Costa and Alameda Counties (24,524 ac (9,925 ha))

Unit 2 is located south of State Route 24, north of Interstate 580, east of State Route 13, and west of Interstate 680 and the cities of Danville, San Ramon, and Dublin. Unit 2 is connected to Unit 6 to the north. Land ownership includes 4,408 ac (1,784 ha) of East Bay Regional Park and East Bay Municipal Utilities District (EBMUD) lands with the remainder of lands being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 2 contains a range of vegetation (PCE 1 and PCE 2), soil types, and rocky features (PCE 3) essential to the conservation of the subspecies, supports viable Alameda whipsnake populations, and has minimal development such as roads and structures. Areas with development or reduced soil and vegetation characteristics were not included as proposed critical habitat for this unit. Essential features within Unit 2 which contain denser woodland habitat may be subject to special management considerations, such as prescribed burns, to improve the habitat quality and enhance the potential for Alameda whipsnake movement between units. Additional special management which may be required throughout this unit includes management of trespass, unauthorized trail construction, dumping, feral animal control and other activities associated with urban interface. Alameda whipsnake records have been documented by multiple records within the unit as well as adjacent to the unit. Dispersal between Units 2 and 1 occurs directly through Unit 6, and impediments to such movement do not appear to be present. Unit 2 is included in the proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied by the subspecies, and represents the central distribution of Alameda whipsnake and one of the five population centers.

Unit 3: Hayward–Pleasanton Ridge; Alameda County (27,551 ac (11,149 ha))

Unit 3 is generally located immediately to the west of Interstate 680 and to the south of Interstate 580. Land ownership includes 404 ac (164 ha) of East Bay Regional Park with the remainder of lands being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 3 contains the mosaic of scrub and chaparral vegetation and rocky outcrops considered as essential features (PCE 1). The unit also includes a variation in vegetation patch size, abundant edge between grassland and woodland, and minimal amount of development or planned development. The soils present are considered supportive of the scrub and rock outcrop features essential for Alameda whipsnake. The Alameda whipsnake records within this unit are associated with Gaviota rocky sandy loams in particular, which likely provide talus (PCE 3) and appear to coincide in aerial imagery to scrub or chaparral vegetation preferred by Alameda whipsnake. Vegetation is largely woodland of variable densities (PCE 2) and statures (trees, shrubs) interspersed with grassland. Some peripheral portions of habitat around this unit were not included as proposed critical habitat due to the high degree of development-related disturbance and fragmentation of the habitat. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied by the subspecies, and represents the southwestern portion of the subspecies range and one of the five population centers. The special management which may be required throughout this unit includes management of controlled burns and grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface.

Unit 4: Mount Diablo–Black Hills; Contra Costa and Alameda counties (69,598 ac (28,165 ha))

This unit encompasses Mount Diablo State Park and surrounding lands, and is largely within Contra Costa County except a small portion that lies in Alameda County. Lands are owned by the Bureau of Land Management (61 ac (25 ha)), State Department of Parks and Recreation (13,874 ac (5,615 ha)), East Bay Regional Park (3,641 ac (1,475 ha)), and private landowners (52,022 ac (21,053 ha)).

Numerous Alameda whipsnake observations (i.e., greater than 50 records from 1972 to present) occur throughout the unit, many of which are associated with dense rock outcrops (PCE 3) and chaparral, scrub, and oak woodland (PCE 1, PCE 2). The pattern of woody vegetation with grassland and rock outcrops forms an intricate landscape mosaic that is highly functional habitat for the Alameda whipsnake. The vegetation and soil characteristics, the mosaic habitat pattern, the abundance of Alameda whipsnake records, and the lack of surrounding development and relative absence of roadways, together indicate that this unit likely provides some of the very highest quality and largest contiguous blocks of habitat within the range of the subspecies, as well as some of its most robust populations. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. Special management required throughout this unit includes management of grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is occupied by the subspecies, and represents the northeastern portion of the subspecies range and one of the five population centers. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 5A: Cedar Mountain; Alameda and San Joaquin Counties (24,723 ac (10,005 ha))

The unit is generally located east of Lake Del Valle along Cedar Mountain Ridge and Crane Ridge to Corral Hollow west of Interstate 580. Land ownership within the proposed unit includes approximately 2,492 ac (1,009 ha) of Department of Energy land and 246 ac (99 ha) of East Bay Regional Park. Lands within the remainder of the unit are privately owned.

The vegetation pattern within this unit consists of dominance by various woodland, scrub, and/or chaparral communities on northeast-facing slopes (PCE 1, PCE 2). More open, grassland-dominated communities are prominent on southwest-facing slopes, but there is also a significant component of

woodland habitat on these slopes. Significant areas of vegetation types known to support Alameda whipsnake are present, including coastal oak, chamise-chaparral, mixed chaparral, blue-oak-foothill pine woodland, blue oak woodland, valley oak woodland, and montane hardwood. In most instances, the proposed boundaries for critical habitat designation correspond to natural breaks in plant communities and soil quality, and/or landform (ridgelines, water features). A moderate number of light roads are present within the unit, although there are very few structures or other land modifications. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. The special management which may be required throughout this unit includes management of grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied by the subspecies, and represents the southern and eastern most distribution of Alameda whipsnake and one of five population centers for the subspecies. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 5B: Alameda Creek; Alameda and Santa Clara Counties (18,214 ac (7,371 ha))

This unit is located northeast of Calaveras Reservoir, south of the town of Sunol including the area along Wauhab Ridge in Alameda County and Oak Ridge in Santa Clara County. Alameda Creek is located at the west margin of the unit, and the unit contains the Sunol Regional Wilderness and Camp Ohlone Regional Park (approximately 361 ac (146 ha)) which are managed by the East Bay Regional Park. Vegetation is a mix of blue oak-foothill pine and annual grassland with a significant amount of woodland patches. Coastal live oak is present in the vicinity of Lleyden Creek. Soil types in which Alameda whipsnakes are found dominate the unit. This subunit contains six Alameda whipsnake records documented between 1972 and 2000. Significant areas of vegetation types know to support Alameda whipsnake are present, including coastal oak, chamise-chaparral, mixed chaparral, blue-oak-foothill pine woodland, blue oak woodland, valley oak woodland, and montane hardwood interspersed with rock outcrops or talus (PCEs 1, 2, 3). The proposed boundaries for critical habitat designation correspond to natural breaks in plant communities, soil type, and or landform. A moderate number of light roads are present within the unit, although there are very few structures or other land modifications. Development pressure within or adjacent to the unit is small, as a result the survey efforts for the Alameda whipsnake have also not been as extensive as in the other proposed units. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. The special management which may be required throughout this unit includes management of grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied, and represents the southern most distribution of Alameda whipsnake and one of the five population centers for the subspecies. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 6: Caldecott Tunnel; Contra Costa and Alameda Counties (4,612 ac (1,867 ha))

This proposed critical habitat unit lies between Units 1 and 2, along the Alameda and Contra Cost County line. Land ownership within this unit includes 272 ac (110 ha) of East Bay Regional Park lands with the remainder of lands being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

The unit is bounded by dense urban development to the east and west. However, the vegetation and soil types that are known to support Alameda whipsnake are dominant throughout the unit (PCEs 1, 2, 3). About eight Alameda whipsnake records are known from the unit between 1990 and 2002. Special management considerations may be warranted to consolidate existing roads or limit additional road construction in order to preserve a corridor function in this unit as a consequence of the restricted width of the unit and the current presence of a moderate number of roads. Prescribed burns may also be required to maintain the habitat mosaic considered essential. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied, and represents the last remaining habitat connecting two of the five population centers for the subspecies. Maintaining connectivity between units allows for dispersal between units for the subspecies and allows for genetic exchange between two of the five population centers for the Alameda whipsnake.

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.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the subspecies.

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 Alameda whipsnakes or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers 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 specific areas designated in this rule as critical habitat for the Alameda whipsnake have been determined to contain sufficient PCEs to provide for one or more of the life history functions for the whipsnake. 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 pursuant to section 7 of the Act 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 may also jeopardize the continued existence of the Alameda whipsnake. Federal activities that, when carried out, may adversely affect critical habitat for the Alameda whipsnake include, but are not limited to:

(1) Actions that would result in altered or degraded chaparral scrub or oak woodland communities. Such activities could include, but are not limited to, urban development, unmanaged fire suppression activities, and livestock overgrazing. These activities could eliminate or reduce the habitat essential for reproduction, growth, or shelter of Alameda whipsnake.

(2) Actions that would result in complete loss of habitat or impediments to migration by development of partial or complete barriers through habitat areas. These activities are most often funded or permitted by the Federal Highway Administration or the State highway system, or involve licensing of construction for communication sites by the Federal Communications Commission. Such activities could include, but are not limited to, new road construction, right-of-way designation, routine maintenance and operation of existing roads, or installation of new radio equipment and facilities. These activities could eliminate foraging, resting, or denning habitat, as well as reduce movement corridors essential for reproduction, sheltering, or growth of Alameda whipsnake. Such activities could also lead to increased road kill incidences for the subspecies.

(3) Actions that result in a discharge of dredged or fill material into waters of the United States by the Army Corps under section 404 of the Clean Water Act. Such activities could include, but are not limited to, placement of fill into wetlands or channelization of stream corridors. These activities could eliminate or reduce the habitat essential for the reproduction, feeding, or growth of Alameda whipsnake.

All six proposed critical habitat units are occupied by the subspecies at the time of listing due to documented records of Alameda whipsnakes in those units. All lands proposed for critical habitat designation are within the historical geographical area occupied by the subspecies, and are likely to be used by the Alameda whipsnake whether for foraging, breeding, growth of juveniles, dispersal, migration, genetic exchange, or sheltering. We consider all units included in this proposed designation to include features essential to the conservation of the Alameda whipsnake.

Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

We are not proposing to exempt any lands from critical habitat pursuant to section 4(a)(3) 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 both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we consider proposing to designate as critical habitat. Lands we have found that do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section

4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Endangered Species Management Plans prepared by the DOD (where a 4(a)(3) exemption is not possible due to a unsigned Integrated Natural Resource Management Plan (INRMP)); (2) legally operative HCPs that cover the subspecies and provide assurances that the conservation measures for the subspecies will be implemented and effective; (3) draft HCPs that cover the subspecies, have undergone public review and comment, and provide assurances that the conservation measures for the subspecies will be implemented and effective (*i.e.*, pending HCPs); (4) Tribal conservation plans/programs that cover the subspecies and provide assurances that the conservation measures for the subspecies will be implemented and effective; (5) State conservation plans/programs that provide assurances that the conservation measures for the subspecies will be implemented and effective; (6) National Wildlife Refuges with Comprehensive Conservation Plans (CCPs) or programs that provide assurances that the conservation measures for the subspecies will be implemented and effective; and (7) Partnerships, conservation plans/easements, or other type of formalized relationship/agreement on private lands where a conservation plan or program provide assurances that the conservation measures for the subspecies will be implemented and effective.

Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. 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 permitted incidental take. HCPs vary in size and may provide for incidental take coverage and conservation management for one or many Federally-listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous Federally-listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs are designed to proactively implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP. However, given the broad scope of these regional HCPs, not all projects envisioned to potentially occur may actually take place. The State of California also has a NCCP process that is very similar to the Federal HCP process and is often completed in conjunction with the HCP process. We recognize that many of the projects with HCPs also have State-issued NCCPs. In the case of approved regional HCPs and accompanying Implementing Agreements (IAs) (e.g., those sponsored by cities, counties, or other local jurisdictions) that provide for incidental take coverage, a primary goal of these regional plans is to provide for the protection and management of habitat essential for species conservation, while directing development to other areas. We are considering excluding lands within the Draft East Contra Costa County HCP from the designation of critical habitat for the Alameda whipsnake pursuant to section 4(b)(2) of the Act. This draft HCP includes lands within a portion of proposed critical habitat Unit 4. We believe the benefits of excluding lands within this draft HCP from the final critical habitat designation outweigh the benefits of including them and seeking public comment on this proposed exclusion. The following represents our rationale for excluding this area.

Draft East Contra Costa County Habitat Conservation Plan (ECCHCP)

The draft ECCHCP is currently under review and open for public comment until December 1, 2005. The document is available at the following Web site: *http://www.cocohcp.org.* The document will also be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

We expect a finalized plan before the end of 2006. Participants in the draft ECCHCP include the County of Contra Costa; the cities of Brentwood, Clayton, Oakley, and Pittsburg, California; the Contra Costa Water District; and the East Bay Regional Park District. The draft ECCHCP encompasses the eastern portion of Contra Costa County from approximately west of Concord to Sand Mound Slough and Clifton Court Forebay on the east. The draft ECCHCP is also a subregional plan under the State's Natural Community Conservation Planning (NCCP) process and was developed in cooperation with the California Department of Fish and Game. The draft ECCHCP identifies the Alameda whipsnake as a covered species and has identified areas where growth and development are expected to occur, as well as several conservation measures, including: (1) Preserving between 12,254 to 13,983 ac (4,959 to 5,659 ha) of Alameda whipsnake habitat; (2) preserving major habitat connections linking existing public lands; (3) incorporating a range of habitat and population management and enhancement measures including monitoring, prescribed burning, and recreational use controls; (4) fully mitigating the impacts to covered species; (5) maintaining ecosystem processes; and (6) contributing to the recovery of covered species. When the conservation measures are implemented they will benefit Alameda whipsnake conservation by preserving and restoring existing core area and upland movement habitat for the species. We expect that the draft ECCHCP will provide substantial protection for all three of the primary constituent elements for the Alameda whipsnake, and that protected lands will receive the special management they require through funding mechanisms that will be implemented under the ECCHCP.

(1) Benefits of Inclusion

The primary benefit to designation of critical habitat is the requirement that Federal agencies consult with the Service under section 7 of the Act to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat. If critical habitat were designated in these areas, primary constituent elements in these areas would be protected from destruction or adverse modification by Federal actions using a conservation standard based on the Ninth Circuit's decision in *Gifford Pinchot.* This requirement would be in addition to the requirement that proposed Federal actions would not be likely to jeopardize the species' continued

existence. However, inasmuch as these areas are currently occupied by the species, consultation for activities that might adversely impact the species, including habitat modification (see definition of ''harm'' at 50 CFR 17.3), would be required even without the critical habitat designation. Because habitat modification is considered under the jeopardy analysis, we believe the benefits of habitat protection from critical habitat is now small to moderate.

As discussed above, we expect the ECCHCP to provide substantial protection of the PCEs and protection of essential features for the Alameda whipsnake on ECCHCP conservation lands. We expect the ECCHCP to provide a greater level of management for the Alameda whipsnake on private lands than would designation of critical habitat on private lands. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas proposed as critical habitat. Therefore, we do not expect that including those areas in the final designation will lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat. Therefore in this case, because of the ECCHCP protections, there is little to no additional protection from critical habitat, and thus the benefits of inclusion are small.

A benefit of including an area in a critical habitat designation is the education of landowners and the public regarding the potential conservation value of the area. 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 conservation benefit has largely been achieved for the Alameda whipsnake through the hearings and workshops that have been held in the East Bay area associated with the listing of the species and previous critical habitat designation. In addition, the HCP itself undergoes public review and comment, providing another layer of educational benefit as the importance of this area for conservation of the species. Therefore the benefits of inclusion for educational purposes are extremely small.

(2) Benefits of Exclusion

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. Many HCPs, particularly large regional HCPs such as the ECCHCP, 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. In fact, designating critical habitat in areas covered by a pending HCP could result in the loss of species' benefits if participants abandon the voluntary HCP process, in part because of the burden of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued voluntary participation in plans targeting listed species conservation.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996). Thus, we believe it is essential for the recovery of the Alameda whipsnake to build on continued conservation activities such as the ECCHCP, and to provide positive incentives for other local government or private landowners who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP that might adversely impact the species, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. 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 and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above. This standard also would apply to all consultation conducted in the interim period prior to finalization of the ECCHCP, whether or not incidental take exemption is provided under section 7 or section 10 of the Act. Therefore, we consider the benefits of exclusion to be moderate.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the conservation measures identified for the Alameda whipsnake identified in the ECCHCP. Based on this evaluation, we currently find that the benefits of exclusion of the lands containing features essential to the conservation of the Alameda whipsnake in the planning area for the draft ECCHCP outweigh the benefits of including those portions of the draft ECCHCP area within Unit 4 as critical habitat. Our final determination will be made after we receive public comment on this proposed critical habitat designation.

The exclusion of these lands from critical habitat would help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the ECCHCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long term conservation of the species, are still accomplished from material provided on our website and through public notice and comment procedures required to establish the ECCHCP. The public also has been informed through the public participation that occurs during the development of this regional HCP. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft ECCHCP.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands, which are considered occupied habitat, will not result in the extinction of the Alameda whipsnake. Actions that might adversely affect the subspecies are expected to have a Federal nexus, and would thus undergo a consultation with the Service under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, as discussed in the economic analysis, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from take prohibitions in section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being proposed for designation for the Alameda whipsnake in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot.* Additionally, the species occurs on

lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values; this factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert with protections afforded each species by the remaining critical habitat designation for the species, which leads us to find that exclusion of these lands will not result in extinction of the Alameda whipsnake. We do not believe that this exclusion would result in the extinction of the subspecies because the draft ECCHCP seeks to: (1) Preserve between 12,254 to 13,983 ac (4,959 to 5,659 ha) of Alameda whipsnake habitat; (2) preserve major habitat connections linking existing public lands; (3) incorporate a range of habitat and population management and enhancement measures including monitoring, prescribed burning, and recreational use controls; (4) fully mitigate the impacts to covered species; (5) maintain ecosystem processes; and (6) contribute to the recovery of covered species.

Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)

The East Bay Regional Park District (EBRPD) manages 65 regional parks, recreation areas, wilderness, shorelines, preserves, and land bank areas covering over 95,000 ac (34,446 ha) in Alameda and Contra Costa counties. The EBRPD Board of Directors adopted the EBRPD Plan on December 17, 1996, under Resolution Number 1996–12–349. The EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. Species conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered species (EBRPD 1997).

We are proposing to exclude lands within the administrative boundaries for EBRPD from the designation of critical habitat for the Alameda whipsnake pursuant to section 4(b)(2) of the Act. A total of approximately 17,440 ac (7,057 ha) is being considered for exclusion.

(1) Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved management plans are small. The EBRPD Plan provides for priority management and conservation of threatened and endangered species where park activities conflict with threatened and endangered species management. The EBRPD Plan provides a mechanism to accomplish these goals for the Alameda whipsnake through the implementation of specific conservation objectives outlined above. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. In the case of the EBRPD Plan, consultation must be initiated for any activity involving the Alameda whipsnake to evaluate the impact of the activity on the species for which the participants are seeking incidental take permits, pursuant to section 7 of the Act. The EBRPD currently holds a Service recovery permit, pursuant to section 10(a)(1)(A) of the Act. As with HCPs, the benefits of designating critical habitat on lands within the boundaries of areas properly managed for threatened and endangered species are small.

(2) Benefits of Exclusion

The benefits of excluding lands within approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans like the EBRPD Plan provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review 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 any voluntary HCP process in which they may be involved. The EBRPD is participating in the ECCHCP, and part of the strategy of the HCP is to link with lands such as those managed by the EBRPD for the conservation of the Alameda whipsnake. The loss of these connecting linkages as a part of the ECCHCP would reduce the conservation benefit for the Alameda whipsnake. Designation of critical habitat within the boundaries of management plans which provide conservation for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan 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 approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

An applicant and any agency carrying out a Federally funded activity that may adversely affect Alameda whipsnake must enter into consultation with the Service under section 7 of the Act. While these consultations 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 actions jeopardize the species in the plan area. The jeopardy analysis is similar to the analysis of adverse modification to critical habitat. Additionally, Federal actions not covered by an HCP or approved management plan in areas occupied by listed species would still require consultation under section 7 of the Act. Plans such as the EBRPD Plan typically provide greater conservation benefits to the covered species than section 7 consultations because they: (1) Assure the long-term protection and management of a covered species and its habitat; (2) include the development of biological information to guide conservation efforts and assist in species conservation; and (3) create innovative solutions to conserve species while still allowing public use of the area.

Maps delineating essential habitat for the Alameda whipsnake, overlaid with the boundary area for the EBRPD, are available for public review and comment at the Sacramento Fish and Wildlife Office (see **ADDRESSES**). These maps are provided to allow the public the opportunity to adequately comment on these potential exclusions.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the conservation measures identified for the Alameda whipsnake identified in the EBRPD. Based on this evaluation, we

currently find that the benefits of exclusion of the lands essential to the conservation of the Alameda whipsnake within the boundaries of the EBRPD land outweigh the benefits of including those portions of land as critical habitat. Our final determination will be made after we receive public comment on this proposed critical habitat designation.

The exclusion of these lands from critical habitat would help preserve the partnerships that we have developed with the local jurisdiction. The educational benefits of critical habitat, including informing the public of areas that are essential for the long term conservation of the species, are still accomplished from material provided on our website and through public notice and required comment procedures. The public also has been informed through the public participation that occurs during the development of this proposed designation and previous listing and critical habitat actions for the subspecies. For these reasons, we believe that designating critical habitat has little benefit in areas managed by the EBRPD.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands, which are considered occupied habitat, would not result in the extinction of the Alameda whipsnake. Actions which might adversely affect the subspecies are expected to have a Federal nexus, and would thus undergo a consultation with the Service under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from the take prohibitions under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being proposed for designation for the Alameda whipsnake in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*. Additionally, the subspecies occurs on lands protected and managed either explicitly for the subspecies, or indirectly through more general objectives to protect natural values; this factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert with protections afforded the subspecies by the remaining critical habitat designation for the subspecies, which leads us to find that exclusion of these lands will not result in extinction of the Alameda whipsnake. We do not believe that this exclusion would result in the extinction of the subspecies because the subspecies is found in other areas and the EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. Species conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered species (EBRPD 1997).

Relationship of Critical Habitat to the State Park Lands—Exclusion Under Section 4(b)(2)

Mount Diablo State Park

Approximately 97 percent of the lands within the boundary of Mount Diablo State Park are currently being proposed as critical habitat. The total amount of State-owned lands proposed for critical habitat within Mount Diablo State Park is approximately 13,874 ac (5,615 ha). Currently, we know of no specific management plan or conservation activities for the Alameda whipsnake within Mount Diablo State Park. However, the lands within the park are publicly owned, and the natural resources within the park are managed in a way to preserve the ecological diversity of the area. The designation of critical habitat would not have any appreciable effect on the development or implementation of public education programs because these lands already are publicly owned, and critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands publicly protected and managed lands. Exclusion of these lands would not increase the likelihood that management activities would be proposed that would appreciably diminish the value of the habitat for conservation of the Alameda whipsnake.

We are, however, not currently proposing to exclude from the designation the State Park lands at Mount Diablo State Park. Should information become available during the public comment period on this proposed rule that would support an exclusion of these State lands, we will conduct an analysis of such information and make our determination of the appropriateness of such an exclusion in our final designation.

Relationship of Critical Habitat to Department of Energy Lands—Exclusion Under Section 4(b)(2)

Approximately 2,492 ac (1,009 ha) of proposed critical habitat for the Alameda whipsnake within Unit 5A are owned by the Department of Energy. The lands are located in eastern Alameda and western San Joaquin counties. The Department of Energy has used these lands within the past as a testing facility. Currently, we know of no specific management plan or conservation activities for the Alameda whipsnake on these lands. However, the lands are publicly owned and currently protected from development. Any activities that may take place which may affect the Alameda whipsnake or its habitat would be subject to consultation under section 7 of the Act.

We are, however, not currently proposing to exclude from critical habitat designation the Department of Energy lands in eastern Alameda and western San Joaquin counties. Should information become available during the public comment period on the proposed rule that would support an exclusion of the Department of Energy lands, we will conduct an analysis of such information and make our determination of the appropriateness of such an exclusion in our final designation.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the Alameda whipsnake is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment on the analysis. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/pacific/sacramento,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES**).

After reviewing the economic analysis, the public comment on it, and the public comment on this proposal, we may exclude additional areas under section 4(b)(2) based on economic or other relevant impact. Our regulations expressly contemplate that these decisions would occur after the comment period (50 CFR 424.19), and do not require advance public notice of intent to make specific exclusions. While we are seeking public comment on those possible exclusions of which we are now aware, we also want to insure that the public is aware that the economic analysis and all public comments may lead us to exclude other areas.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers a copy of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during public comment periods on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (groupings and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to 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. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination thereof, in a designation constitutes our regulatory alternative analysis.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comment. When completed, the draft economic analysis can be obtained from the Internet website at *http://www.fws.gov/pacific/sacramento/* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES**).

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

Our assessment of economic effect will be completed prior to any final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

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. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that

the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an 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 proposed rule to designate critical habitat for the Alameda whipsnake is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), 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 of the Act. 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 on to State governments.

(b) Due to current public knowledge of the subspecies' protection, and the prohibition against take of the subspecies both within and outside of the designated areas, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments in that the areas essential to the conservation of the subspecies are more clearly defined, and the PCEs of the habitat necessary to the survival of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case consultations under section 7 of the Act 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 have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Alameda whipsnake.

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 Act. 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 essential for the conservation of the Alameda whipsnake. Therefore, critical habitat for the Alameda whipsnake is not being proposed on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this package are the staff of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[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 § 17.95(c), revise the entry for ''Alameda Whipsnake (*Masticophis lateralis euryxanthus*'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) Reptiles.

* * * * *

Alameda Whipsnake (*Masticophis lateralis euryxanthus*)

(1) Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin, and Santa Clara counties, California, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) are:

(i) *Scrub communities with a mosaic of open and closed canopy:* Scrub/shrub vegetation dominated by low to medium-stature woody shrubs with a mosaic of open and closed canopy as characterized by the chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998). These vegetation series occur within the range of the Alameda whipsnake from near sea level to approximately 3,850 ft (1,170 m). Such scrub/shrub vegetation within these series form a pattern of open and closed canopy which is used by the Alameda whipsnake to provide shelter from predators, temperature regulation by providing sunny and shady locations, prey-viewing opportunities, and nesting habitat and substrate. These features contribute to support a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds. These areas are the core areas where Alameda whipsnakes reside most frequently and are used for retreats (shelter), thermoregulation, foraging, and provide additional prey population support functions.

(ii) *Other lands adjacent to the Alameda whipsnake's home range as described in PCE 1, i.e., scrub communities with a mosaic of open and closed canopy of varying vegetation types:* Other lands adjacent to PCE 1 composed of either one or both woodland or annual grassland vegetation series such as blue oak, coast live oak (Quercus sp.), California bay (*Umbellularia californica*), California buckeye, and California annual grassland vegetation series (as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998)) are PCE 2. These vegetation series establish a pattern of vegetation which provide opportunities for:

(A) Foraging by allowing snakes to come in contact with and visualize, track, and capture prey (especially western fence lizards along with other prey such as skinks, frogs, birds);

(B) Short and long distance dispersal within, between, or to adjacent to areas containing essential features (i.e., PCE 1 or PCE 3); and

(C) Contact with other Alameda whipsnakes for mating and reproduction.

(iii) *Rock outcrops, talus, and small mammal burrows within the essential core scrub or adjacent areas containing essential features identified in PCE 1 and 2:* Rock outcrops, talus, and small mammal burrows within either rock outcrops or grassland or other vegetation series identified in PCE 2 located in close proximity to or embedded within those essential core scrub/shrub areas (PCE 1) and intervening non-scrub communities (PCE 2) that support a prey base, are PCE 3. These areas are used for retreats (shelter), hibernacula, foraging, dispersal, mating, and provide additional prey population support functions.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) GIS data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Map 1 (index map) follows:

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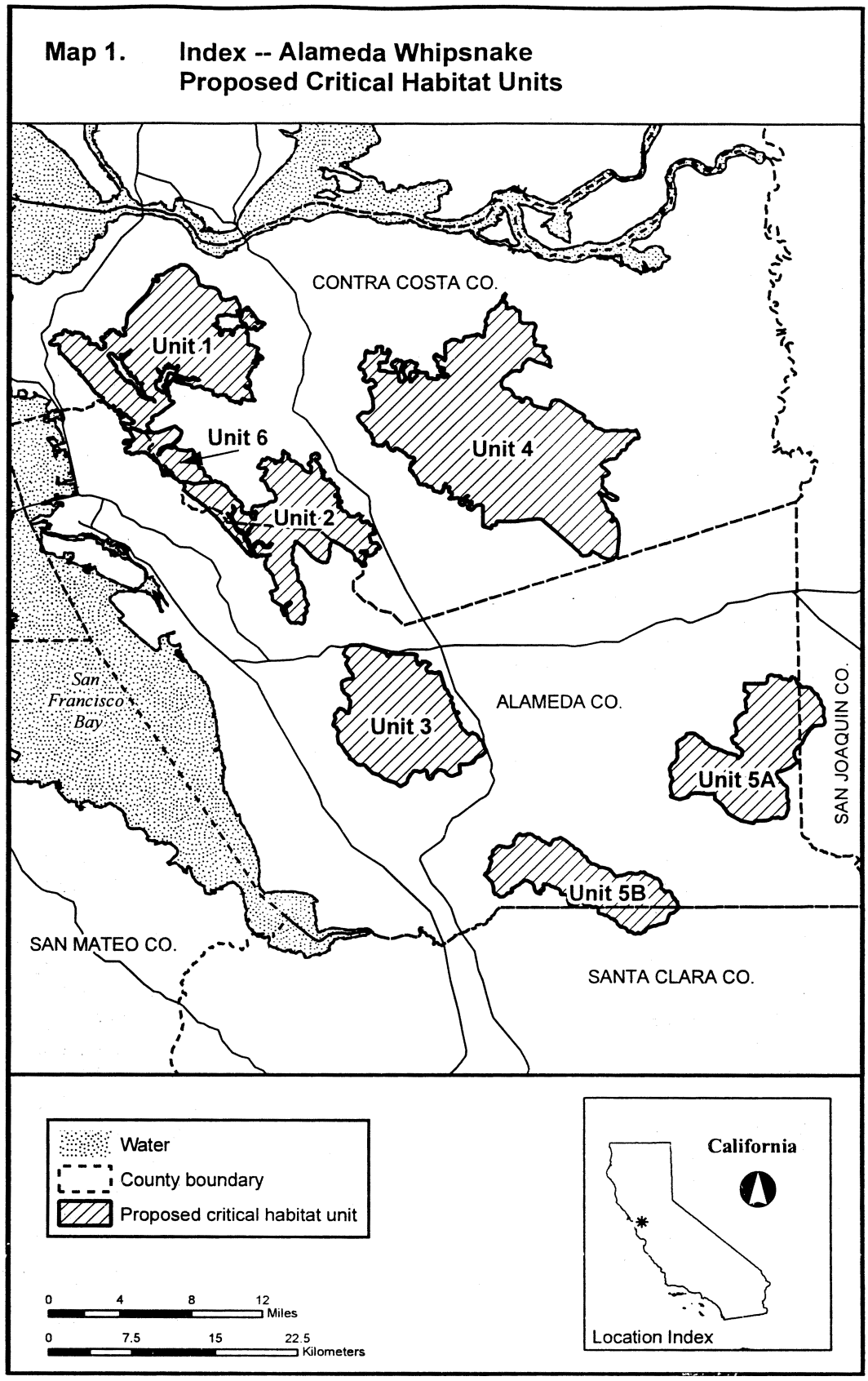

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(6) Unit 1: Tilden-Briones Unit, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 scale quadrangles Benicia, Richmond, Briones Valley, Walnut Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 568816,4192719; 568794,4192710; 568668,4192690; 568516,4192684; 568350,4192684; 568198,4192684; 568154,4192688; 568059,4192697; 567874,4192737; 567735,4192796; 567596,4192862; 567470,4192915; 567365,4192955; 567193,4193015; 567014,4193041; 566895,4193034; 566776,4192988; 566650,4192915; 566650,4192915; 566627,4192907; 566624,4192906; 566624,4192905; 566624,4192905; 566597,4192895; 566552,4192888; 566521,4192917; 566488,4192936; 566462,4192947; 566440,4192960; 566427,4192961; 566400,4192966; 566374,4192986; 566356,4193003; 566343,4193028; 566329,4193054; 566313,4193082; 566303,4193114; 566300,4193137; 566308,4193173; 566304,4193194; 566299,4193206; 566295,4193224; 566289,4193242; 566272,4193263; 566264,4193283; 566257,4193304; 566244,4193328; 566218,4193353; 566191,4193372; 566172,4193392; 566153,4193417; 566142,4193427; 566130,4193452; 566116,4193473; 566110,4193492; 566107,4193514; 566107,4193528; 566135,4193541; 566161,4193552; 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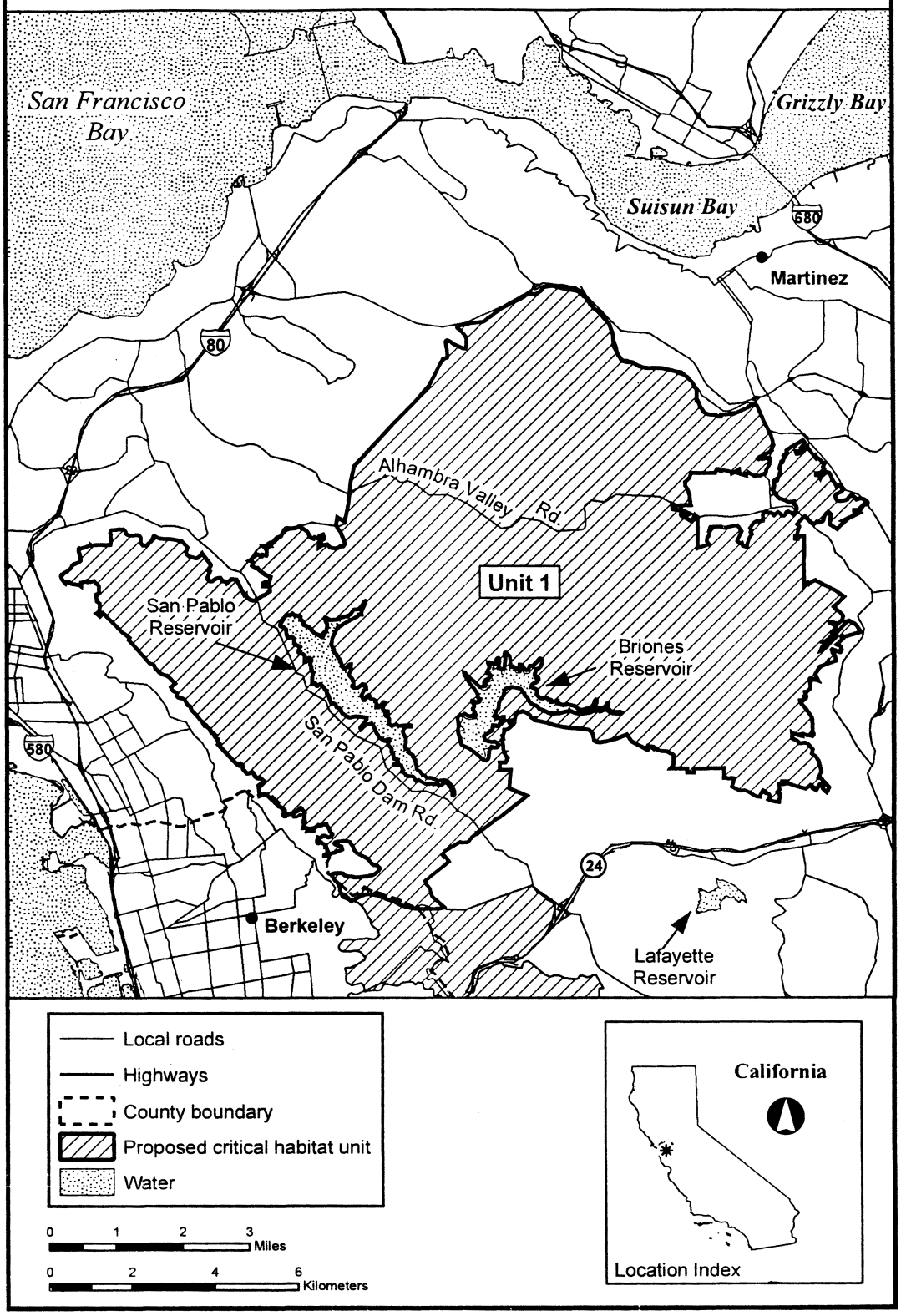
(ii) Note: Map 2 (Unit 1) follows:

BILLING CODE 4310–55–U

Map 2. Alameda Whipsnake Proposed Critical Habitat, Unit 1



BILLING CODE 4310–55–C

(7) Unit 2: Oakland-Las Trampas Unit, Alameda and Contra Costa Counties, California

(i) From USGS 1:24,000 scale quadrangles Oakland East, Las Trampas Ridge, Diablo, and Hayward. 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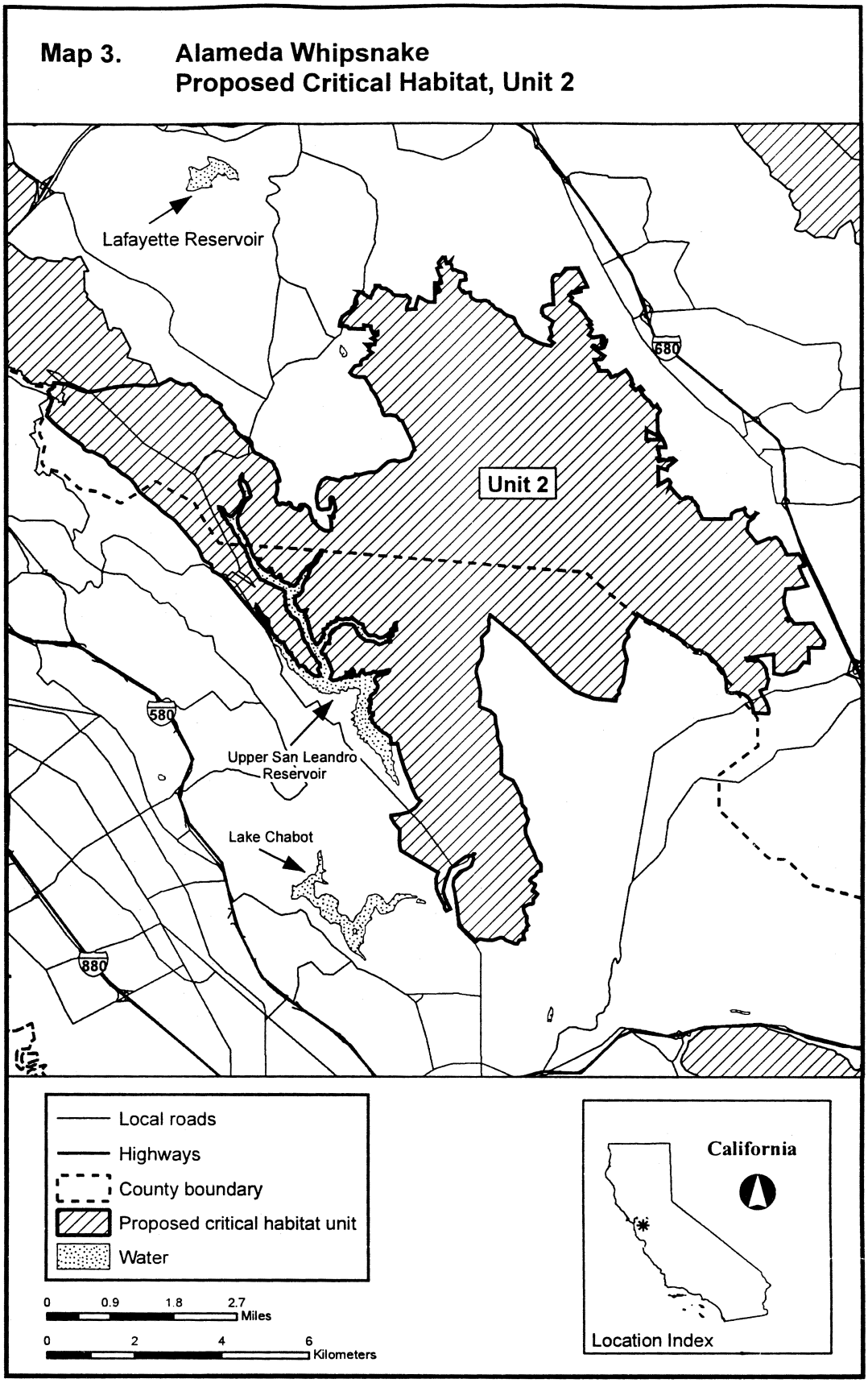
(ii) Note: Map 3 (Unit 2) follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(8) Unit 3: Hayward-Pleasanton Ridge Unit, Alameda County, California

(i) From USGS 1:24,000 scale quadrangles Hayward, Newark, Dublin, and Niles. 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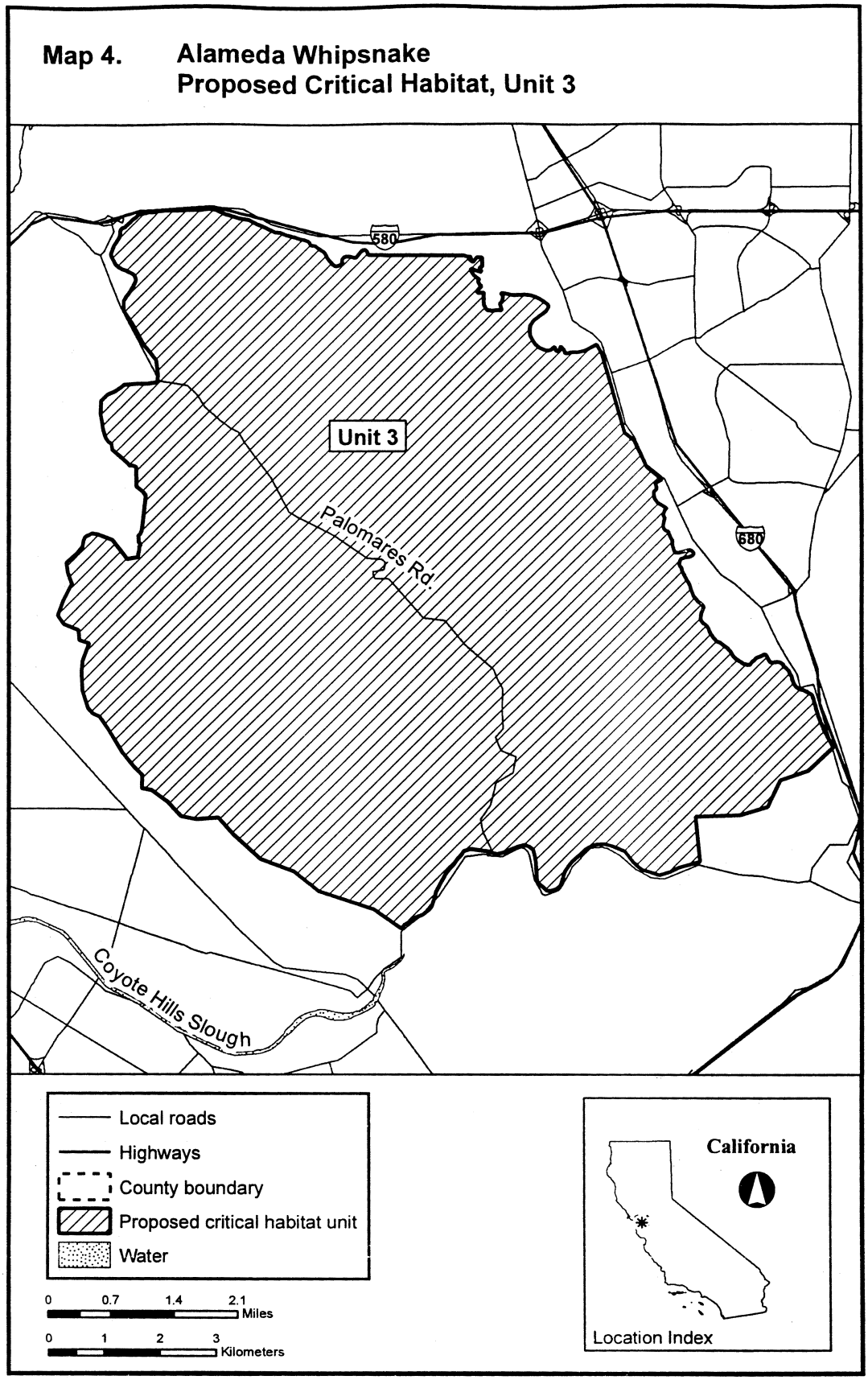
(ii) Note: Map 4 (Unit 3) follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(9) Unit 4: Mount Diablo-Black Hills Unit, Alameda and Contra Costa Counties, California

(i) From USGS 1:24,000 scale quadrangles Walnut Creek, Clayton, Antioch South, Brentwood, Diablo, Tassajara, Byron Hot Springs. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 600579,4204646; 600559,4204566; 600879,4204575; 600886,4203982; 601430,4204124; 601455,4204117; 601553,4204075; 601647,4204044; 601681,4204001; 601709,4203959; 601734,4203868; 601771,4203861; 601819,4203870; 601890,4203763; 601985,4203785; 602106,4203785; 602092,4203741; 602100,4202971; 602103,4202866; 602381,4202684; 602463,4202654; 602894,4202653; 603312,4202664; 603427,4202666; 603435,4202670; 603434,4202643; 603441,4202618; 603500,4202400; 603493,4202323; 603467,4202245; 603444,4202190; 603413,4202115; 603413,4202115; 603412,4202114; 603402,4202085; 603382,4202004; 603377,4201949; 603369,4201911; 603371,4201909; 603369,4201909; 603356,4201846; 603361,4201757; 603363,4201720; 603342,4201677; 603361,4201643; 603332,4201384; 603550,4201173; 603334,4201023; 603412,4200709; 603547,4200630; 603683,4200676; 604021,4200608; 604487,4200549; 604378,4200404; 604175,4200359; 604199,4200072; 604394,4199700; 604696,4199573; 604702,4199570; 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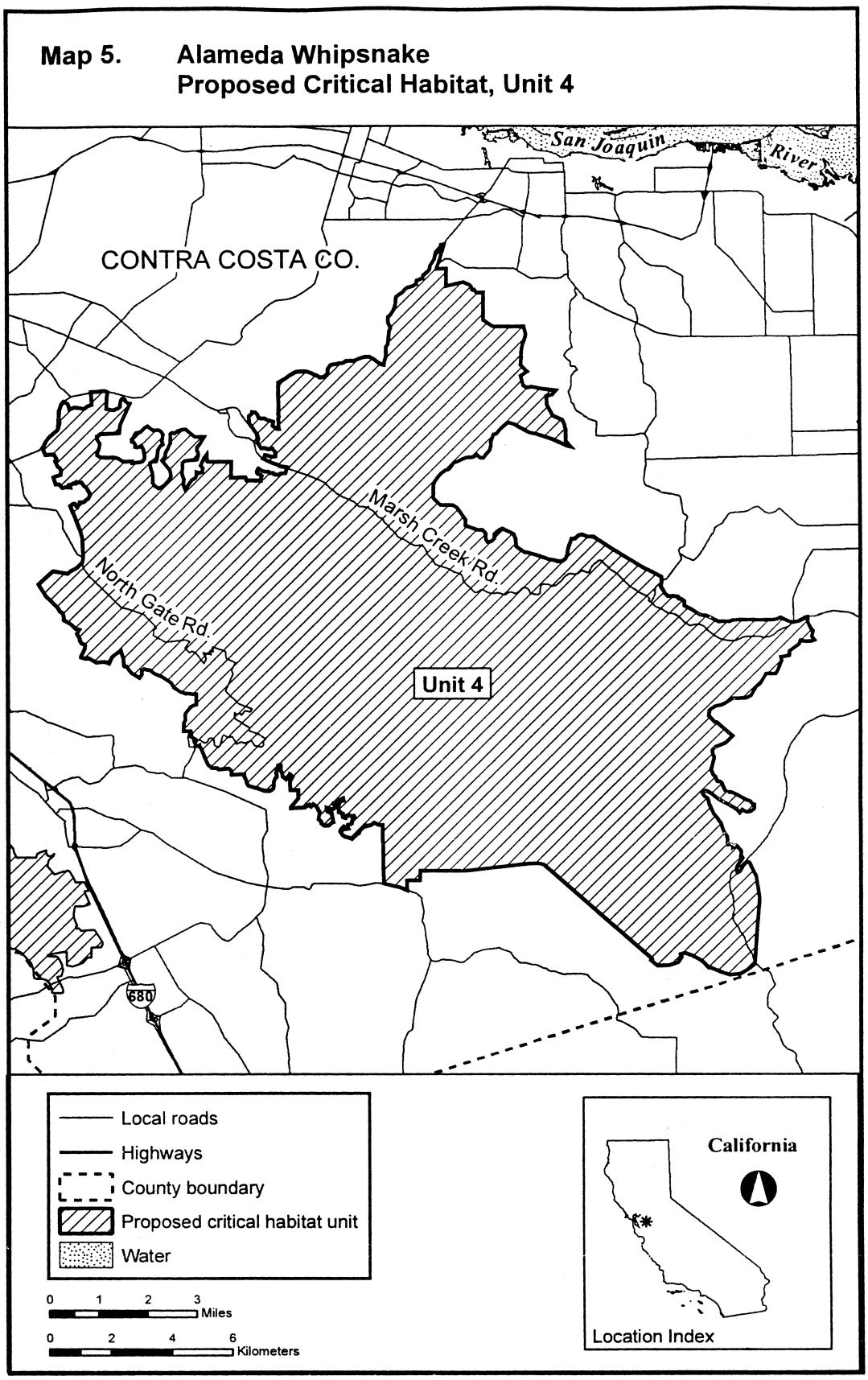
(ii) Note: Map 5 (Unit 4) follows:

BILLING CODE 4310–55–U



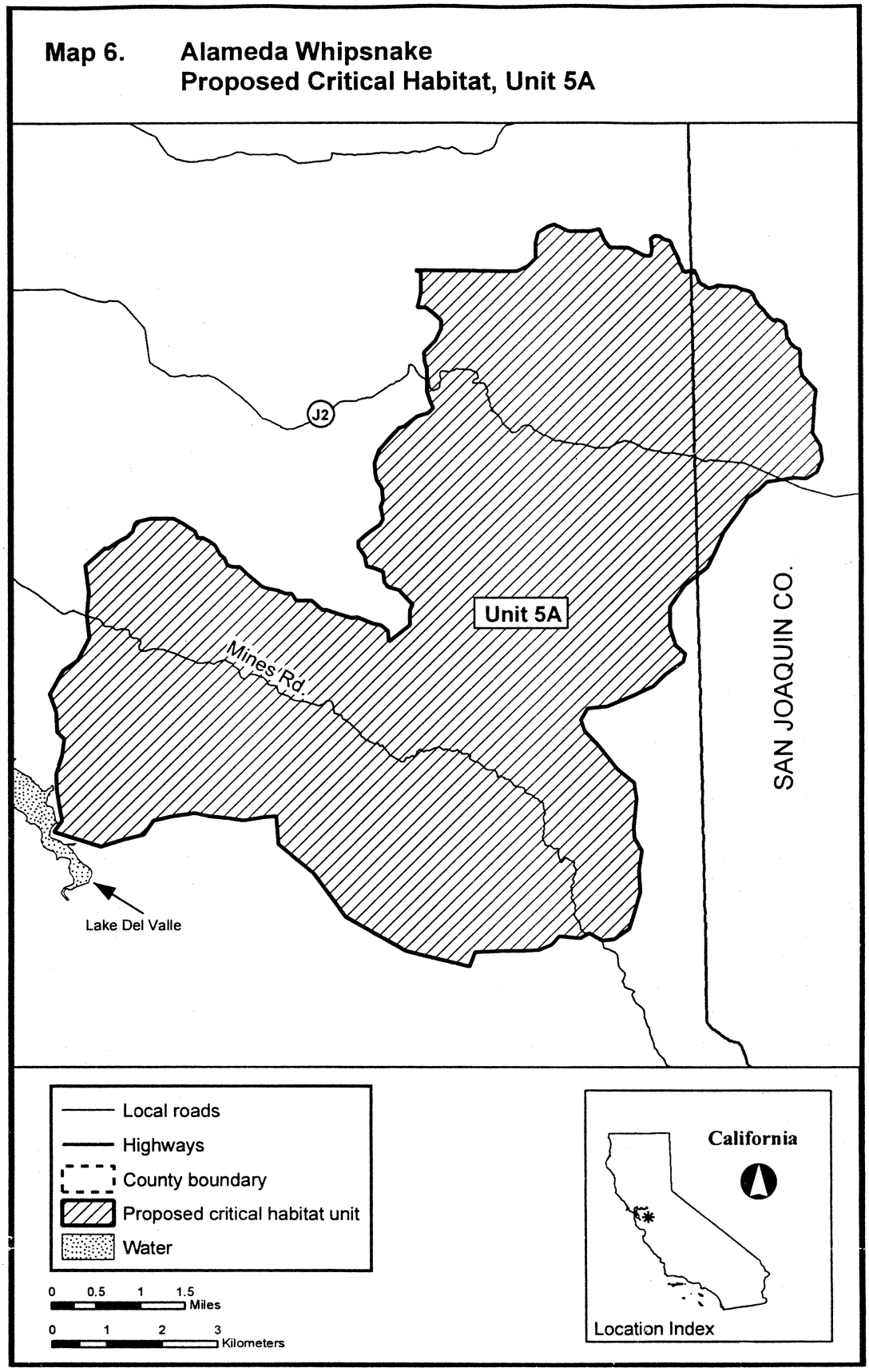
BILLING CODE 4310–55–C

(10) Unit 5A: Cedar Mountain Unit, Alameda and San Joaquin Counties, California

(i) From USGS 1:24,000 scale quadrangles Altamont, Midway, Mendenhall Springs, and Cedar Mtn.. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 624962,4170579; 625090,4170515; 625154,4170515; 625282,4170515; 625474,4170515; 625645,4170558; 625731,4170366; 625837,4170216; 626179,4170216; 626478,4170066; 626585,4170066; 626607,4170195; 626586,4170399; 626612,4170390; 626615,4170402; 626626,4170412; 626629,4170422; 626647,4170434; 626684,4170436; 626707,4170437; 626747,4170425; 626770,4170407; 626790,4170391; 626813,4170378; 626916,4170347; 626952,4170323; 626958,4170301; 626972,4170253; 626979,4170229; 626989,4170208; 627014,4170156; 627029,4170132; 627056,4170089; 627067,4170049; 627082,4170002; 627104,4169947; 627139,4169865; 627167,4169809; 627195,4169785; 627228,4169767; 627251,4169785; 627304,4169793; 627382,4169802; 627397,4169763; 627414,4169719; 627433,4169669; 627458,4169619; 627478,4169587; 627515,4169552; 627558,4169537; 627589,4169507; 627605,4169498; 627635,4169480; 627660,4169479; 627680,4169489; 627710,4169497; 627746,4169507; 627774,4169519; 627799,4169530; 627821,4169526; 627879,4169517; 627925,4169510; 627973,4169509; 628048,4169503; 628109,4169500; 628174,4169480; 628209,4169464; 628262,4169442; 628292,4169436; 628335,4169426; 628368,4169417; 628404,4169394; 628430,4169357; 628450,4169311; 628467,4169264; 628487,4169239; 628505,4169216; 628508,4169199; 628522,4169179; 628555,4169134; 628575,4169119; 628598,4169094; 628639,4169047; 628666,4169011; 628750,4168928; 628805,4168875; 628842,4168896; 628863,4168894; 628886,4168893; 628938,4168875; 628971,4168851; 629006,4168810; 629023,4168784; 629021,4168755; 629020,4168729; 629029,4168691; 629039,4168653; 629035,4168625; 629041,4168604; 629049,4168574; 629076,4168531; 629098,4168485; 629141,4168434; 629182,4168396; 629196,4168394; 629218,4168381; 629270,4168352; 629286,4168227; 629286,4168009; 629326,4167870; 629564,4167612; 629544,4167413; 629524,4167116; 629504,4166838; 629643,4166600; 629683,4166342; 629584,4166104; 629385,4165985; 629167,4166005; 628671,4165925; 628532,4165786; 628314,4165628; 628155,4165370; 627897,4165012; 627738,4164655; 627599,4164358; 627183,4164020; 626925,4163643; 626925,4163246; 627024,4162929; 627202,4162770; 627163,4162631; 626845,4162393; 626627,4162175; 626250,4161996; 625774,4161798; 625416,4161758; 625297,4161540; 625357,4161341; 625615,4161063; 625952,4160647; 626270,4160389; 626309,4160091; 626250,4159575; 626270,4159377; 626409,4159139; 626349,4158781; 626369,4158385; 626239,4157942; 626171,4157710; 625893,4157511; 625674,4157492; 625436,4157630; 625278,4157531; 624901,4157571; 624762,4157412; 624524,4157313; 624206,4157293; 623809,4157293; 623373,4157273; 623369,4157265; 623273,4157015; 622122,4157293; 621011,4157928; 620436,4158722; 619801,4159258; 619761,4159774; 619543,4159754; 619166,4159694; 618888,4159734; 618531,4159774; 618293,4159833; 617896,4159774; 617538,4159694; 617360,4159436; 616983,4159337; 616586,4159218; 615732,4159484; 615878,4159699; 615819,4160001; 615780,4160265; 615771,4160548; 615878,4160899; 615917,4161191; 615790,4161328; 615771,4161679; 615653,4162020; 615897,4162459; 616170,4162645; 616375,4163064; 616328,4163465; 616368,4163901; 616308,4164397; 616658,4164712; 616715,4164704; 616865,4164811; 617057,4164918; 617164,4165025; 617207,4165153; 617249,4165196; 617484,4165260; 617698,4165260; 617912,4165260; 618061,4165174; 618296,4165025; 618339,4164896; 618446,4164896; 618531,4164854; 618659,4164768; 618745,4164597; 618830,4164533; 618873,4164405; 618980,4164362; 619108,4164362; 619236,4164234; 619514,4163999; 619599,4163978; 619792,4163935; 619941,4163871; 620048,4163871; 620133,4163743; 620411,4163743; 620603,4163572; 620689,4163572; 620796,4163529; 621137,4163422; 621244,4163444; 621437,4163358; 621543,4163316; 621672,4163294; 621800,4163187; 621821,4162995; 621832,4163004; 622206,4163294; 622206,4163465; 622206,4163572; 622248,4163679; 622013,4163935; 621928,4163956; 621800,4163999; 621736,4164085; 621714,4164277; 621565,4164341; 621415,4164384; 621372,4164576; 621330,4164640; 621266,4164726; 621266,4164832; 621415,4164961; 621522,4165046; 621650,4165131; 621714,4165238; 621693,4165345; 621672,4165473; 621714,4165580; 621693,4165815; 621607,4165965; 621586,4166071; 621565,4166232; 621565,4166285; 621650,4166520; 621821,4166712; 622013,4166926; 622099,4166947; 622334,4167140; 622547,4167204; 622633,4167289; 622590,4167396; 622526,4167588; 622526,4167866; 622526,4167994; 622483,4168144; 622462,4168315; 622676,4168528; 622782,4168742; 622782,4168891; 622654,4169020; 622505,4169126; 622355,4169126; 622377,4169233; 622419,4169426; 622419,4169596; 622419,4169767; 622312,4169810; 624150,4169789; 624342,4169874; 624492,4170024; 624492,4170152; 624492,4170323; 624534,4170494; 624705,4170601; 624833,4170643; and returning to 624962,4170579.

(ii) Note: Map 6 (Unit 5A) follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(11) Unit 5B: Alameda Creek Unit, Alameda and Santa Clara Counties, California.

(i) From USGS 1:24,000 scale quadrangles Niles, La Costa Valley, Mendenhall Springs, Calaveras Reservoir, and Mt. Day. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 602197,4155953; 602258,4155892; 602394,4155892; 602455,4155938; 602516,4155938; 602637,4155938; 602698,4155953; 602747,4156027; 602943,4156019; 603025,4156003; 603122,4156019; 603334,4155905; 603480,4155791; 603577,4155710; 603724,4155710; 603854,4155726; 603919,4155564; 604016,4155499; 604114,4155499; 604130,4155353; 604260,4155353; 604358,4155320; 604520,4155190; 604634,4155174; 604797,4154979; 604911,4155076; 604927,4155206; 605008,4155336; 605089,4155385; 605138,4155483; 605220,4155531; 605350,4155580; 605561,4155580; 605659,4155645; 605805,4155743; 605984,4155613; 606244,4155450; 606569,4155206; 606699,4155092; 606780,4155011; 606862,4154979; 606943,4154914; 607089,4154702; 607349,4154670; 607658,4154410; 607707,4154296; 607772,4154166; 607951,4154052; 608146,4153922; 608309,4153499; 608471,4153467; 608585,4153402; 608666,4153255; 608926,4153255; 609008,4153174; 609105,4153174; 609203,4153125; 609284,4152979; 609495,4152995; 609609,4152995; 609902,4152914; 610195,4152816; 610357,4152719; 610455,4152524; 610552,4152475; 610634,4152394; 610666,4152296; 610699,4152198; 610861,4152150; 610975,4152150; 611089,4152198; 611268,4152198; 611398,4152198; 611495,4152296; 611625,4152296; 611690,4152345; 611820,4152394; 611869,4152459; 611983,4152475; 612373,4152475; 612552,4152361; 612650,4152361; 612763,4152377; 612910,4152426; 613056,4152540; 613089,4152540; 613186,4152491; 613267,4152491; 613397,4152524; 613446,4152524; 613495,4152442; 613593,4152361; 613674,4152361; 613706,4152312; 613788,4152280; 613885,4152263; 613934,4152215; 614015,4152198; 614097,4152150; 614259,4152052; 614340,4152052; 614438,4151987; 614487,4151955; 614617,4151961; 614655,4151916; 614722,4151868; 614780,4151820; 614808,4151743; 614828,4151675; 614847,4151627; 614876,4151560; 614933,4151454; 614962,4151397; 614962,4151368; 614933,4151282; 614914,4151205; 614895,4151109; 614905,4151070; 614953,4151041; 615001,4151003; 615049,4150984; 615116,4150964; 615202,4150840; 615241,4150715; 615298,4150715; 615308,4150753; 615366,4150801; 615539,4150801; 615615,4150801; 615692,4150782; 615750,4150782; 615846,4150657; 615884,4150542; 615913,4150465; 615952,4150378; 615990,4150254; 616019,4150206; 616067,4150177; 616163,4150138; 616192,4150109; 616240,4150042; 616269,4149946; 616317,4149917; 616413,4149812; 616413,4149572; 616470,4149504; 616499,4149447; 616499,4149360; 616499,4149254; 616403,4149168; 616307,4149053; 616134,4148909; 615971,4148793; 615775,4148764; 615641,4148634; 615584,4148470; 615467,4148052; 615372,4147941; 615144,4147897; 614816,4147815; 614624,4147768; 614579,4147670; 614189,4147648; 613874,4147530; 613683,4147420; 613492,4147170; 613184,4147002; 613095,4146958; 613007,4146920; 612885,4147011; 612824,4147011; 612733,4146904; 612627,4146904; 612475,4146920; 612354,4147026; 612323,4147102; 612126,4147102; 611959,4147102; 611853,4147254; 611777,4147406; 611701,4147481; 611564,4147512; 611504,4147512; 611337,4147588; 611306,4147573; 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605795,4150563; 605795,4150654; 605780,4150821; 605750,4150913; 605628,4151034; 605461,4151095; 605340,4151095; 605264,4151110; 605157,4151186; 605036,4151186; 605006,4151231; 604884,4151292; 604823,4151353; 604763,4151398; 604641,4151398; 604520,4151383; 604383,4151398; 604262,4151429; 604186,4151429; 604216,4151307; 604216,4151171; 604262,4151140; 604292,4151095; 604292,4151019; 604277,4150958; 604292,4150897; 604277,4150821; 604095,4150821; 604034,4150791; 604019,4150654; 604034,4150548; 603973,4150472; 603867,4150609; 603806,4150609; 603685,4150639; 603609,4150670; 603533,4150746; 603457,4150913; 603412,4151049; 603412,4151201; 603396,4151262; 603336,4151383; 603229,4151535; 603199,4151565; 603108,4151550; 603047,4151656; 602971,4151656; 602850,4151717; 602759,4151778; 602683,4151778; 602577,4151778; 602501,4151793; 602425,4151793; 602394,4151702; 602377,4151646; 602227,4151550; 602030,4151353; 601817,4151292; 601681,4151140; 601529,4151064; 601392,4151034; 601301,4150943; 601362,4150882; 601438,4150852; 601423,4150746; 601377,4150670; 601286,4150624; 600982,4150624; 600952,4150563; 600861,4150457; 600724,4150320; 600588,4150320; 600512,4150275; 600360,4150260; 600239,4150290; 600163,4150412; 600087,4150487; 600026,4150487; 599874,4150503; 599829,4150548; 599737,4150700; 599753,4150821; 599737,4150867; 599722,4150943; 599707,4151292; 599677,4151368; 599586,4151626; 599525,4151717; 599419,4151763; 599328,4151884; 599267,4151990; 598902,4152355; 599039,4152385; 599100,4152461; 599191,4152552; 599236,4152658; 599312,4152765; 599358,4152886; 599388,4153023; 599419,4153220; 599449,4153266; 599495,4153342; 599510,4153372; 599510,4153448; 599525,4153509; 599540,4153645; 599358,4153782; 599358,4153827; 599403,4153888; 599479,4153903; 599555,4153949; 599601,4154070; 599662,4154161; 599662,4154344; 599646,4154389; 599677,4154526; 599798,4154541; 599844,4154632; 599965,4154769; 600056,4154860; 600147,4154921; 600208,4154921; 600314,4154905; 600421,4154936; 600527,4154875; 600679,4154875; 600800,4154799; 600922,4154799; 601180,4154860; 601392,4154966; 601514,4155042; 601575,4155179; 601559,4155300; 601544,4155391; 601544,4155437; 601605,4155482; 601711,4155558; 601742,4155649; 601757,4155710; 601817,4155786; 601802,4155816; 601833,4155877; 601878,4155862;

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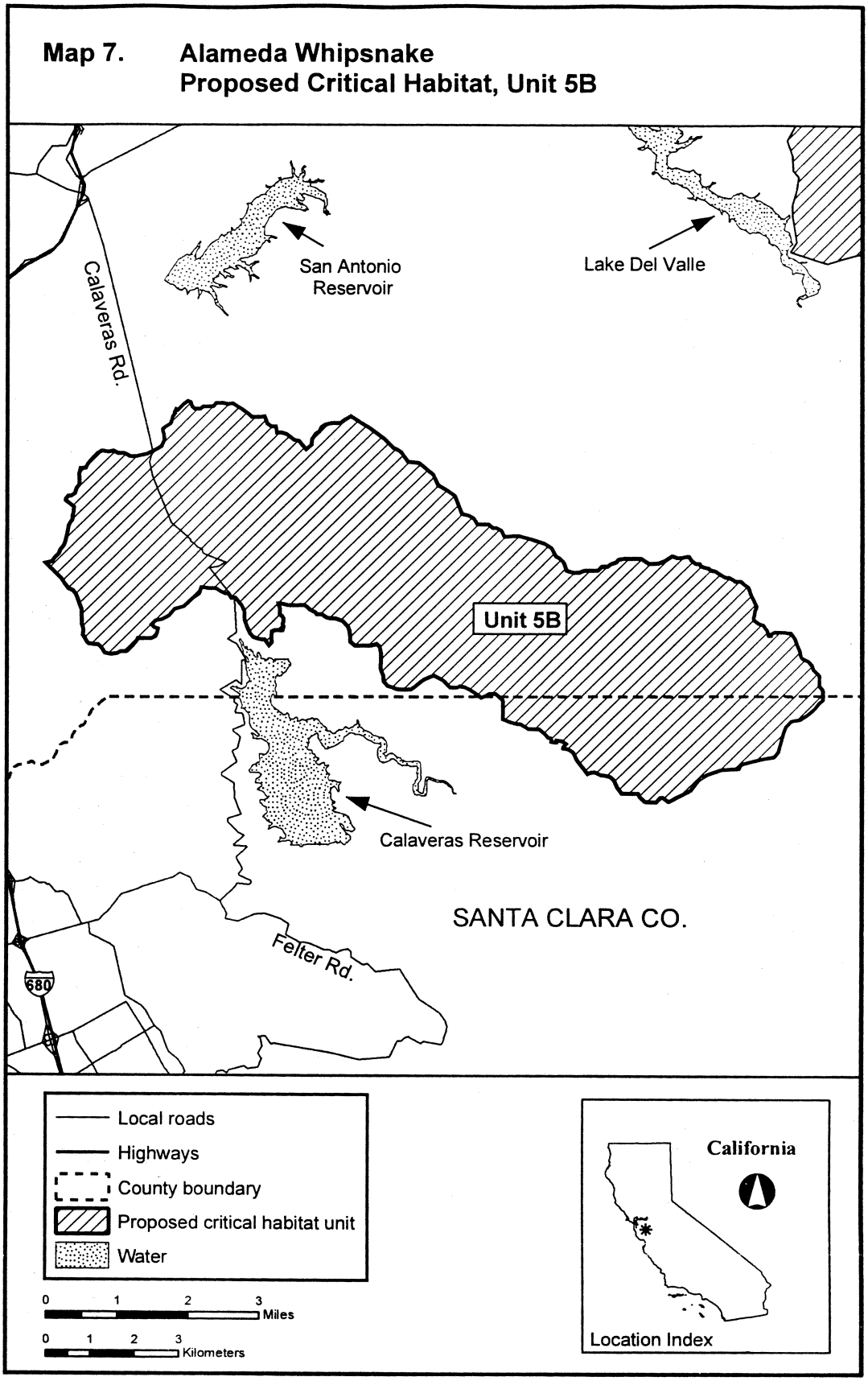
(ii) Note: Map 7 (Unit 5B) follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(12) Unit 6: Caldecott Tunnel Unit, Alameda and Contra Costa Counties, California

(i) From USGS 1:24,000 scale quadrangles Briones Valley, and Oakland East. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):574257,4188128; 574237,4188122; 574149,4188116; 574055,4188110; 573986,4188110; 573898,4188116; 573804,4188122; 573710,4188122; 573597,4188103; 573484,4188097; 573371,4188084; 573251,4188072; 573163,4188053; 573050,4188034; 572943,4188003; 572824,4187978; 572686,4187965; 572560,4187984; 572447,4188022; 572340,4188072; 572259,4188110; 572146,4188147; 572045,4188160; 571970,4188166; 571888,4188166; 571887,4188166; 571887,4188166; 571887,4188165; 571886,4188165; 571886,4188165; 571881,4188161; 571877,4188157; 571873,4188153; 571871,4188149; 571870,4188147; 571869,4188144; 571867,4188142; 571864,4188142; 571861,4188142; 571853,4188140; 571840,4188132; 571830,4188124; 571820,4188118; 571808,4188115; 571795,4188114; 571786,4188115; 571778,4188116; 571765,4188119; 571749,4188124; 571727,4188134; 571718,4188138; 571708,4188144; 571698,4188159; 571692,4188165; 571679,4188165; 571670,4188161; 571655,4188156; 571634,4188158; 571592,4188163; 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(ii) Note: Map 8 (Unit 6) follows:

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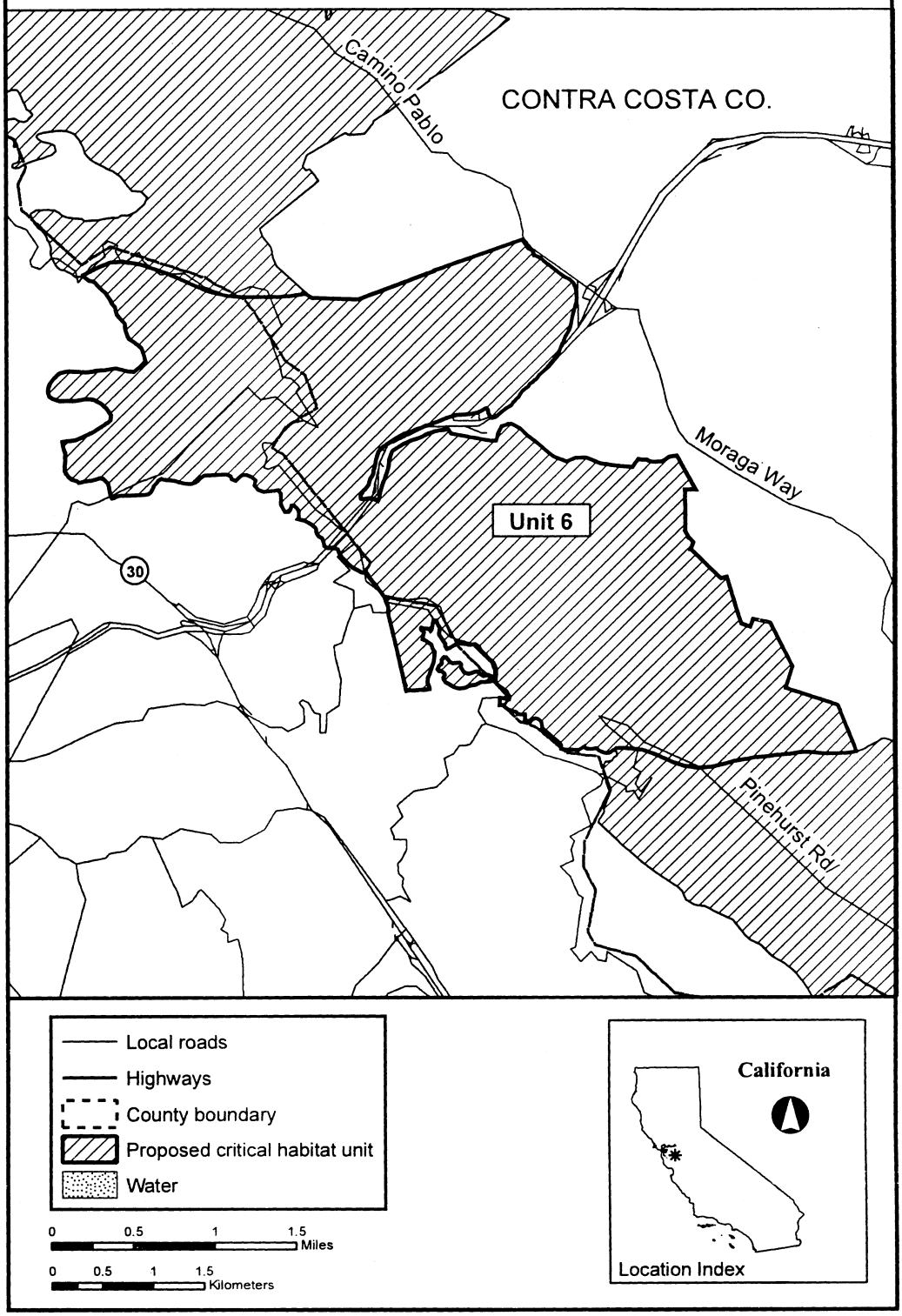
Map 8. Alameda Whipsnake Proposed Critical Habitat, Unit 6



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Dated: September 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20145 Filed 10–17–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
October 18, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Navarretia Fossalis* (Spreading Navarretia); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT86

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Navarretia Fossalis* (Spreading Navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Navarretia fossalis* (spreading navarretia) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 652 acres (ac) (264 hectares (ha)) fall within the boundary of the critical habitat designation. The designated critical habitat is within San Diego and Los Angeles Counties, California. We have exempted or excluded approximately 18,747 ac (7,586 ha) of habitat with essential features in Riverside and San Diego Counties from this designation of critical habitat.

DATES: This rule becomes effective on November 17, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone: 760/431–9440). The final rule, economic analysis (EA), and map are also available via the Internet at *http://carlsbad.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office (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 ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation 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 ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 473 species, or 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. In the case of listed plants, such as *Navarretia fossalis,* section 9 of the Act prohibits any person subject to the jurisdiction of the United States from removing and reducing to possession any such species from areas under Federal jurisdiction; maliciously damaging or destroying any such species on such area; or removing, cutting, digging up, or damaging or destroying any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a State criminal trespass law. 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 regarding critical habitat designation, 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 and to comply with the growing number of adverse court orders. As a result, the Service's own proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for additional public participation beyond that minimally required by the Administrative Procedures Act (APA), the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues 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 will suffer adverse impacts from these decisions challenge them. 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); all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that are 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 identification and final designation of critical habitat for *Navarretia fossalis* in this rule. For more information on this species, beyond what is presented in the following paragraph, refer to the final rule listing this species as threatened 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 1, 2004 (69 FR 60110). Additional information can also be found in the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998).

Navarretia fossalis, a member of Polemoniaceae (Phlox family), is a low, mostly spreading or ascending, annual herb, 4 to 6 inches (in) (10 to 15 centimeters (cm)) tall. This species grows in vernal pools, clay flats, irrigation ditches, alkali grasslands, alkali playas, and alkali sinks (Dudek and Associates, Inc. 2003; Spencer 1997). *N. fossalis* is distributed from northwestern Los Angeles County and western Riverside County, south through coastal San Diego County, California to northwestern Baja California, Mexico (Moran 1977; Oberbauer 1992). Fewer than 30 populations exist in the United States (63 FR 54975). Nearly 60 percent of the known populations are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (Service 1998). We estimate that less than 300 ac (120 ha) of habitat in the United States was occupied by this species (63 FR 54975). In Mexico, *N. fossalis* is known from fewer than 10 populations clustered in three areas: along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977).

Previous Federal Action

For more information on previous federal actions concerning *Navarretia fossalis,* refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975). Efforts necessary for the recovery of *N. fossalis* are presented in the Recovery Plan (Service 1998).

At the time of listing, we concluded that designation of critical habitat for *Navarretia fossalis* 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 *N. fossalis* (*CBD, et al.* v. *Norton,* No. 01–CV–2101 (S.D. Cal.)). A second lawsuit asserting the same claim was filed against the DOI and us 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 a remand of the critical habitat determinations to us 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 *N. fossalis,* if prudent, on or before January 30, 2004. In a motion to modify the July 1, 2002 order, the DOI and we requested that the due date for the *N. fossalis* proposed rule be extended until October 1, 2004 and the due date for the designation of final critical habitat be extended to October 1, 2005. This motion was granted on September 9, 2003. The proposed critical habitat rule was signed on October 1, 2004 and published in the **Federal Register** on October 7, 2004 (69 FR 60110).

Summary of Comments and Recommendations

We requested written comments from peer reviewers and the public on the proposed designation of critical habitat for *Navarretia fossalis* (69 FR 60110) and on the draft economic analysis during two separate comment periods noticed in the **Federal Register**. 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 draft economic analysis.

During the comment period for the proposed rule that opened on October 7, 2004, and closed on December 6, 2004, we received 4 comments directly addressing the proposed critical habitat designation: 1 from a peer reviewer, 1 from a Federal agency, and 2 from organizations or individuals. During the comment period that opened on August 31, 2005, and closed on September 14, 2005, we received 8 comment letters directly addressing the proposed critical habitat designation and the draft economic analysis. In general all of the comments supported the general idea of the designation of critical habitat, however most of the commenters made suggestions or comments on sections of the designation and draft economic analysis that they felt required revision. Comments received were grouped into general issues categories relating to the proposed critical habitat designation for *N. fossalis* and economic analysis 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.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five 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 only one of the peer reviewers. The peer reviewer provided additional information, clarifications of occurrences, and suggestions to improve the final critical habitat rule (i.e., improvements to the primary constituent elements, identification of essential occurrences, and correction of factual errors). In general the peer reviewer agreed with designating critical habitat for *Navarretia fossalis,* however, the peer reviewer found the document in need of substantial revision.

We reviewed all comments received from the peer reviewer and the public for substantive issues and new information regarding critical habitat for *Navarretia fossalis.* All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

1. *Comment:* The peer reviewer submitted several separate comments on *Navarretia fossalis* and the Western Riverside Multiple Species Habitat Conservation Plan (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 *N. fossalis.*

Our Response: We appreciate the peer reviewer's concerns regarding the MSHCP and its associated documents. We have incorporated detailed information on these documents as they relate to *Navarretia fossalis* into this rule under the section titled ''Relationship of Critical Habitat to Approved Habitat Conservation Plans''. For further information, the MSHCP and its associated IA are available via the

Internet at *http://rcip.org/conservation.htm.* 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.*

2. *Comment:* The peer reviewer disagreed with our decision to exclude critical habitat based on the presence of an existing habitat conservation plan, specifically the Western Riverside MSHCP. Comments submitted included the statement that the Service failed to provide an adequate basis for the exclusion of critical habitat, that our decision to exclude critical habitat based on the MSHCP's ability to protect the species habitat was not adequately supported, and that there are federal agencies that 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 excluding non-Federal lands covered by the Western Riverside MSHCP outweigh the benefits of including non-Federal lands as critical habitat. Additionally, we have included a more detailed analysis of the benefits of this habitat conservation plan (HCP) in this final rule under the ''Relationship of Critical Habitat to Approved Habitat Conservation Plans'' section.

3. *Comment:* The peer reviewer disagreed with the Service's statement in the **SUPPLEMENTARY INFORMATION** section that designation of critical habitat provides little additional protection to species. 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 critical habitat designation would give more recognition and attention to *Navarretia fossalis* habitat.

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 does the 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 by addressing cumulative effects of numerous impacts to the habitat in certain circumstances, 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. While designation of critical habitat may give the species habitat more recognition and attention, it is our experience that landowners generally react negatively to having their property designated as critical habitat. Consequently, this is a strong disincentive for them to cooperate in the conservation of the species in question.

4. *Comment:* The peer reviewer 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.'' The reviewer believed the Service should 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 they can offer active management and other conservation measures for the habitat on a full-time and predictable basis. Critical habitat designations only prevent 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 look forward to working with HCP applicants to ensure that their plans meet the issuance criteria and that designation of critical habitat on lands where an HCP is in development does not delay the approval and implementation of their HCP. As stated in our response under Comment 4 above, it is our experience that landowners generally react negatively to having their property designated as critical habitat. Additionally, HCPs offer conservation of covered species whether or not the area is designated as critical habitat.

5. *Comment:* The peer reviewer suggested expanding the discussion on Special Management Considerations. Recommendations included citing specific language from the Act to support our statement that occupied habitat may be included in critical habitat only if the essential features may require special management or protection, and clarifying the extent and limitations of management measures proposed under the MSHCP. The reviewer was 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: As stated in the ''Critical Habitat'' section of the proposed rule, section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. 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 ''Relationship of Critical Habitat to Approved Habitat Conservation Plans'' section).

6. *Comment:* The peer reviewer suggested incorporating 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 *Navarretia fossalis.*

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. *Navarretia fossalis* is currently known to occur predominantly on private lands. If occupied private lands were designated as critical habitat, any actions with a Federal nexus that might adversely affect 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.

7. *Comment:* The peer reviewer believes that threats to the species are not adequately addressed in the proposed rule. Additional threats to discuss include 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 Approved Habitat Conservation Plans'' and ''Special Management Considerations or Protections'' sections of this final rule.

Public Comments

1. *Comment:* One commenter indicated they were interested in working with us to plan for the conservation of *Navarretia fossalis.* This commenter indicated that more conservation could be achieved through partnerships with private land owners than through the designation of critical habitat. The commenter believed the largest benefit of the critical habitat process was that it provided information to land owners of what areas are important for *N. fossalis* conservation and would not provide any extra protection.

Our Response: We are currently in the process of contacting and working with this land owner to create a partnership that will result in the conservation of *Navarretia fossalis* at this location.

2. *Comment:* One commenter disagreed with our exclusion of Department of Defense (DOD) lands under section 4(b)(2) of the Act as well as the exemption of DOD lands covered by an Integrated Natural Resources Management Plan (INRMP) under section 4(a)(3) of the Act. The commenter disagreed with removing these lands from the designation of critical habitat because they did not believe that the INRMP provides the same conservation protections to *Navarretia fossalis* that critical habitat would.

Our Response: Section 318 of fiscal year 2004 the National Defense Authorization Act (Public Law 108–136) amended the Endangered Species Act to address the relationship of INRMPs to critical habitat by adding a new section 4(a)(3). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

The lands at Marine Corps Air Station (MCAS) Miramar and Marine Corps Base (MCB) Camp Pendleton are covered by approved INRMPs that identify sensitive natural resources with various resource conservation requirements and management concerns, and both INRMPs provide a benefit to *Navarretia fossalis.* As a result of the INRMPs on both there have been base wide surveys for vernal pools and sensitive species that occur in vernal pool habitat. These surveys are then used to create maps for conservation management and to facilitate training in a way that can co-exist with the sensitive resources (for more details, see the Section ''Application of Section 4(a)(3) and Exclusions under Section 4(b)(2) of the Act.''

3. *Comment:* One commenter stated that the goals outlined in the Recovery Plan (Service 1998) should be included in this document.

Our Response: It is our policy to use the original scientific research that was used to create the Recovery Plan in identifying critical habitat. The reader is encouraged to refer to the Recovery Plan to better understand the goals outlined in that document.

4. *Comment:* One commenter stated that HCPs fail to address degradation of habitat (e.g., off-road vehicle impacts on vernal pools) inside the reserves. The commenter believes that critical habitat designation in these areas would provide additional funding opportunities for law enforcement presence through a variety of state and federal funding mechanisms.

Our Response: The Service believes that the designation of critical habitat within HCPs would do little to reduce the impacts caused to *Navarretia fossalis* by unauthorized activities occurring in reserve areas. These activities lack a federal nexus and therefore would be unaffected by the designation of critical habitat. In most areas there are local ordinances that make such unauthorized activities against the law. These laws should be enforced in order to avoid degradation to the sensitive resources that the HCPs have been created to protect.

5. *Comment:* One commenter 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 *Navarretia fossalis* 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 HCP 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 ''Relationship of Critical Habitat to Approved Habitat Conservation Plans'' section of the proposed rule, we agree that the MSHCP benefits the conservation of *Navarretia fossalis* and 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 their plans meet the issuance criteria and that designation of critical habitat on lands where an HCP is in development does not delay the approval and implementation of their HCP.

6. *Comment:* One commenter disagreed with our decision to exclude critical habitat based on the presence of an existing HCP. The commenter stated 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. 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 4 above.

7. *Comment:* One commenter believed threats to the species were not adequately addressed in the proposed rule and the MSHCP. The commenter suggested discussing the threats of manure spreading and non-seasonal flows which may result from future development.

Our Response: See the response to Peer Reviewer Comment 7 above.

8. *Comment:* One commenter stated that failure to designate critical habitat within HCP boundaries would be a disincentive for landowners to develop future HCPs.

Our Response: We disagree with this comment. It has been our experience that many different stakeholders participate in creating an HCP. It is important for these stakeholders to continue to have a good working relationship with us after the planning process is completed. We have found that the negative reaction of landowners to the subsequent designation of critical habitat can threaten the partnerships on which a functioning HCP is built.

9. *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 habitat with essential features 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 City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP outweigh the benefits of inclusion. See the ''Relationship of Critical Habitat to Approved Habitat Conservation Plans'' section for a detailed discussion. We exempted critical habitat at Marine Corps Air Station Miramar and Marine Corps Base Camp Pendleton under section 4(a)(3) of the Act because their respective Integrated Natural Resources Management Plans provide a benefit to *Navarretia fossalis*.

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.

10. *Comment:* One commenter stated that connectivity between essential habitat units is lacking.

Our Response: Connectivity between habitat units is likely important for the long-term conservation of vernal pools. However, we do not have adequate information at this time to quantify the extent of the area needed to maintain connectivity between vernal pool habitats. Therefore, we are unable to designate these areas as critical habitat.

11. *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. Another 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: In making this designation of critical habitat we considered all of the published and unpublished literature on this species. This literature included information on the life history, habitat requirements, distribution, population sizes, and restoration of *Navarretia fossalis*. This information was used to identify the primary constituent elements and habitat areas with features essential to the conservation of *N. fossalis*. Other information which would have been helpful to the process of designating critical habitat, such as information about pollinators or the population genetics of this species was not available. 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. In addition, 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.

Public Comments on the Draft Economic Analysis

1. *Comment:* One commenter states that the Draft Economic Analysis (DEA) quantifies costs for projects that do not overlap occupied habitat for *Navarretia fossalis* and that the proposed critical habitat is much larger than the occupied habitat, exaggerating the economic impacts.

Our Response: As described in Section 5.1, Table 6 of the DEA, past development projects outside of the footprint of any proposed critical habitat designation have impacted the species habitat within the lands proposed for designation. In recognition of this relationship, 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 described in Section 1.2: The analysis considers the cost of

species and habitat conservation, not solely costs associated with projects within occupied habitat.

2. *Comment:* A comment provided on the DEA asserts that the methodology used to quantify development impacts is questionable as it does not examine and quantify the cost of purchasing the reserves for the various habitat conservation plans (HCPs); that land will have to be purchased or obtained through mitigation deductions and that projects may have to be modified to avoid impacts to vernal pools and vernal pool watersheds. The comment also states the DEA does not analyze the potential loss of developable private lands or the potential cost of transfer of ownership of lands for mitigation.

Our Response: Section 2.2.2.1 of the DEA describes the model applied to estimate impacts to development. The DEA assumes that development is allowed in habitat areas if appropriate project modifications and/or mitigation activities are undertaken, and/or mitigation fees paid. That is, this open city modeling approach assumes that land is not lost to development, but instead that development occurs with mitigation. Further, the various HCPs that encompass the proposed critical habitat designation do not describe the exact location or timing of each acre of private land to be acquired for the HCP reserves. However, as described in Section 5.2.4.1, current and forecasted land use and population growth rates were available from the counties to spatially forecast future development within the proposed critical habitat units.

The Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) has implemented a one-time mitigation fee for future development within the boundaries of the MSHPC. These funds will be used by the County to finance the future acquisition of lands for the MSHCP reserve and are captured by the DEA (Section 5.2.5). The remaining HCPs do not contain a mitigation fee component to their program. As outlined in Section 5.2.2, however, conservation and mitigation activities for all the HCPs, including the MSHCP, can be on-site or off-site and can be accomplished by: restoration and enhancement; 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 the range of mitigation ratios among HCPs and the variety of mitigation measures available to the developer for conservation, the analysis presents the costs incurred by development for *Navarretia fossalis* conservation as a range. While options for mitigation exist, by applying the least costly measure to the low-end of the range of mitigation ratios and the most costly measure to the high-end of the range of mitigation ratios, the DEA captures and reports the costs associated with possible combinations of mitigation ratios and conservation efforts forecast to be used to offset impacts to the species and habitat.

3. *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 within the proposed critical habitat units was researched. As described in Table 6 of Section 5.1, several development projects are currently in progress and representatives from these 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 from these representatives. Data are not available on all future development projects during the 20 year forecast period; thus, where specific information is unavailable, the analysis estimates average costs of impacts to development on a per-acre rather than per-project basis.

4. *Comment:* United States Marine Corps Air Station Miramar (MCAS Miramar) comments that the area is indeed part of a military airfield and that while no new development is currently planned, it cannot commit to stating that there will be no new development, or re-development, of airfield associated facilities within Unit NI2 during the next 20 years.

Our Response: The DEA is consistent with this comment as post-designation effects estimated by the DEA are based only on activities that are ''reasonably foreseeable'' as described in Section 1.3. Furthermore, the DEA quantifies development impacts on developable land, and only 3.5 acres of the unit (677 acres) are vacant and available for development. The remaining acres are either already developed or undevelopable. The DEA does not anticipate impacts to redevelopment of already developed land as the primary constituent elements (PCEs) for the species do not exist within the footprint of the existing development (i.e., buildings, runways, and roads).

5. *Comment:* A comment from Los Angeles County Department of Regional Planning states that the DEA should acknowledge that designation of critical habitat Units 1A and 1B should not impose a financial burden on the owners of that property because development of the southern portion of that property, if approved, would allow a reasonable return on their investment with the preservation of the habitat.

Our Response: The DEA identifies and quantifies where possible costs of *Navarretia fossalis* conservation efforts. In determining the impact to projects of *N. fossalis* habitat conservation, the acreage of developable land in Units 1A and 1B was obtained from Los Angeles County Department of Regional Planning. This information is contained in Table 13, Acreage by Current Land Use Category and Habitat Unit, and identifies 471.1 acres of developable land in Unit 1A and 58.5 acres in Unit 1B. The DEA estimates a range of potential impacts that may be associated with development projects on the specified number of acres within these units as summarized in Section 5.2.5 Estimation Results: Cost of Mitigation Fees and Conservation Activities. The DEA anticipates that conservation of *N. fossalis* and habitat will not preclude development.

6. *Comment:* One commenter states that the description of the Western Riverside MSHCP does not explain how the MSHCP will conserve essential habitat for *Navarretia fossalis*, and the economic impacts of implementing this plan. The commenter further states the analysis should note the amount of potential MSHCP reserve acreage in each critical habitat unit and the amount of essential habitat that will be conserved in each unit.

Our Response: The economic impacts of implementing the MSHCP for Navarretia fossalis are captured in the DEA through the quantification of mitigation fees and of the costs of project modifications as described in Section 5.2.5. The mitigation fee collected from future development will be used to finance the acquisition of lands for the reserve and certain improvements necessary to implement the goals and objectives of the MSHCP. As described in Section 4.4.4, the MSHCP is criteria based, and the quantity and location of acres that will be added to the reserve within each critical habitat unit is not known with certainty.

7. *Comment:* A comment provided by the California Native Plant Society (CNPS) and Center for Biological Diversity (CBD) states that the cost estimates of species conservation as provided in the DEA conflict with those estimated in the Western Riverside MSHCP and the San Diego Multiple Species Conservation Plan (MSCP), which are less. Therefore, either the

DEA or the HCPs 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. The MSCP similarly describes the costs of financing the plan's implementation. These impacts as described in the plans, however, are not directly comparable to the economic impact of Navarretia fossalis conservation as quantified in the DEA. Primarily, the policy actions being analyzed are different. The MSHCP and MSCP estimate the costs of acquiring and managing reserve areas and other conservation actions for the multiple species covered under the plan. Further, the geographic scope of the plans are different from that of the potential critical habitat designation.

8. *Comment:* According to one comment, the Draft Economic Analysis (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 Ramona Expressway is part of the State Route 79 project described in Section 6.1.1.2 of the DEA. Consultants hired by Cal Trans for this project were contacted during the development of the DEA and indicated that it is too early to estimate what project modifications or mitigation may be required. Further, research undertaken during the development of the DEA did not identify a dam across the San Jacinto River and additional research conducted in response to public comment has also not identified a dam construction project on the San Jacinto River. In the case that this comment is referencing the San Jacinto River Flood Control Project, the associated costs are captured in Section 6.2 of the DEA.

9. *Comment:* A comment provided by MCAS Miramar identifies future actions to protect the species in addition to those quantified in the DEA. These include (1) vernal pool basin delineation, (2) identification of restoration and re-establishment opportunities, (3) flora and fauna inventories, (4) maintenance and monitoring selected vernal pool areas, (5) establishment of an interpretive walk, (6) installation of signs and fencing, and (7) funding for an established burn study.

Our Response: The DEA details conservation costs at MCAS Miramar in Section 6.4.1, Table 38. Research undertaken during the development of the DEA and following receipt of this comment confirms that the costs estimated in the DEA capture these categories of impact. The first, third, and fourth actions described in the comment letter are included in ''Vernal Pool Mapping/Survey'' as quantified in the DEA. The DEA also includes $10,000 annually for maintenance and monitoring (action number four) in the category ''Vernal Pool Management.'' ''Public Education,'' as quantified in the DEA, includes $10,000 for the interpretive walk (action number five) and $80,000 for signs (action number six), and ''Vernal Pool fire Effects Study'' as quantified includes $25,000 for the burn study in 2006 (action number 7).

10. *Comment:* MCAS Miramar also comments that the DEA incorrectly explains the decision of where to locate the MV22 Osprey aircraft. In fact, there are three alternative basing locations for the MV22 Osprey on MCAS Miramar being evaluated; only one however overlaps with habitat that has features essential to the conservation of *Navarretia fossalis*. While this will be considered in evaluating the location alternatives, it is likely that the MV22 will be located at MCAS Miramar, potentially within the essential habitat for *N. fossalis.*

Our Response: Section 6.4.1 of the DEA describes this project. This comment provides further information on the decision-making process but does not change the economic impacts to MCAS Miramar as described in the DEA.

11. *Comment:* One comment states that the report appears biased because it implies that low income farmers are the principal landowners within the essential habitat 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 31,086 acres of habitat with essential features is unknown. As described in Section 6.8, approximately one-third of all habitat with essential features is classified as agriculture land, and this agriculture land represents 65 percent of the developable acres. Considering farmers own a large percentage of the areas 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.

12. *Comment:* One commenter requests that more detail be provided on local regulations that protect *Navarretia fossalis* habitat within San Diego, Los Angeles, and Riverside counties.

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.

13. *Comment:* One comment states that the DEA fails to discuss the potential U.S. Army Corps of Engineer (USACE) jurisdiction of the vernal pools found in Los Angeles County.

Our Response: As described in Section 5.2.3, the DEA assumes that vernal playa habitat occurring in Los Angeles County is under USACE jurisdiction.

14. *Comment:* Three commenters suggest the economic analysis should be limited to the 4,301 acres proposed for critical habitat rather than the 31,086 acres of essential habitat, which comprise lands proposed for designation, excluded from designation, and not included in the designation.

Our Response: Conducting the economic analysis for all lands that contain the physical and biological features essential to the conservation of the species allows the Service to fully describe the economic costs of designating and excluding critical habitat.

15. *Comment:* A comment provided asserts that the DEA needs to explain the difference between ''excluded'' and ''not included'' lands and how these two designations would affect the management of the species.

Our Response: The term ''excluded'' refers to lands that meet the definition of critical habitat under section 3(5)(A) of the Act and were excluded as critical habitat under section 4(b)(2) of the Act. The term ''not included'' refers to lands that meet the definition of critical habitat under section 3(5)(A) of the Act and were exempted as critical habitat under section 4(a)(3) of the Act. In both cases, no critical habitat was designated and section 7(a)(2) of the Act would not apply.

16. *Comment:* Three commenters request an extension of the public comment period and/or suggest the public review period was too brief.

Our Response: We were unable to extend the comment period or have a lengthy comment period because of the court-ordered deadline to publish the final rule.

Comments from States

Section 4(i) of the Act states, the Secretary shall submit to the State agency a written justification for her failure to adopt regulations consistent with the State agency's comments or

petition. The California Department of Fish and Game (CDFG) did not provide comments on the proposed rule or on the draft economic analysis to designate critical habitat for *Navarretia fossalis*.

Department of Defense (DOD) Comments

We received comments from the U.S. Navy (Navy) regarding the proposed designation of critical habitat on Marine Corps Base, Camp Pendleton (MCB Camp Pendleton) regarding the proposed designation of critical habitat. No other Federal agencies submitted comments on this critical habitat.

1. *Comment:* The Navy believes that MCB Camp Pendleton's INRMP provides a benefit to *Navarretia fossalis* and should be exempt from critical habitat under 4(a)(3) of the Act. The Navy assured us that MCB Camp Pendleton is committed to implementing the INRMP by using an ecosystem approach to conservation.

Our Response: In the proposed rule, we excluded ''mission critical training areas'' on MCB Camp Pendleton under section 4(b)(2) of the Act due to the effect of critical habitat on national security. However, MCP Camp Pendleton provided us with information that required us to re-evaluate the benefits of their INRMP to *Navarretia fossalis*. As a result, we have determined that their INRMP benefits the species and MCB Camp Pendleton is exempt from critical habitat pursuant to section 4(a)(3) of the Act (see ''Application of Section 4(a)(3) and Exclusions under Section 4(b)(2) of the Act'' for a detailed discussion).

2. *Comment:* The Navy stated that the consideration of the potential impacts to MCB Camp Pendleton's military mission from the proposed critical habitat supports exclusion under 4(b)(2) of the Act of lands that have value for military training and operations in the event that 4(a)(3) of the act was not warranted. They stated that the benefits of avoiding adverse impacts to military readiness capabilities make exclusion of MCB Camp Pendleton's lands both necessary and supportable.

Our Response: All DOD lands with habitat features essential for *Navarretia fossalis* on MCB Camp Pendleton are exempt from being designated as critical habitat pursuant to section 4(a)(3) of the Act, and therefore, no exclusions are necessary under section 4(b)(2) of the Act. For additional information, please see our responses to comment 2 under Public Comments and comment 1 above. Also see Application of Section 4(a)(3) and Exclusions under Section 4(b)(2) of the Act for a detailed discussion of the application of section 4(a)(3) of the Act.

Summary of Changes from the Proposed Rule

In developing the final critical habitat designation for *Navarretia fossalis*, we reviewed public comments received on the proposed rule and draft economic analysis; conducted further evaluation of lands included as proposed critical habitat; and refined our mapping boundaries. Based on our analysis we made several changes to the proposed rule, including refining the mapping area and changes based on sections 4(a)(3) and 4(b)(2) of the Act.

We refined our mapping criteria to better delineate habitat with essential features. When we reviewed our mapped critical habitat units we found there were areas that did not contain the physical and biological features essential to the conservation of *Navarretia fossalis*. For example, some areas contained land that was downhill from vernal pool complexes containing *N. fossalis*. This adjacent land may act as a buffer and contribute to the overall health of the vernal pool ecosystem, but did not contain the primary constituent elements (PCEs) for this species. In other areas buildings or paved roads were included in our proposed designation. In most cases this was due to our minimum grid cell size of 100 meters (328 feet), but where the majority of the grid was developed, we eliminated these grid cells from critical habitat. There were also areas on MCAS Miramar where we had new survey data which did not support our analysis of specific areas that we proposed as having essential features. Even though these areas are exempt from critical habitat under 4(a)(3) of the Act, we felt it was important to clarify that these areas are not considered essential for the species at this time. These refinements resulted in a reduction in the amount of land designated as critical habitat in Units 1A, 2, 3, 4E, 5A and 5D (see Table 1). Areas exempt from the designation of critical habitat under sections 4(a)(3) and 4(b)(2) of the Act were also refined, resulting in further reduction of the amount of land designated as habitat with essential features. Overall these refinements resulted in a reduction of habitat for *N. fossalis* from 31,086 ac (12,580 ha) to 22,804 ac (9,228 ha).

In the proposed rule, we excluded ''mission critical training areas'' on MCB Camp Pendleton under 4(b)(2) of the Act due to the effect of critical habitat on national security. However, MCP Camp Pendleton provided us with information that required us to re-evaluate the benefits of their INRMP to *Navarretia fossalis*. As a result, we have determined that their INRMP benefits the species and are now exempting ''mission critical training areas'' on MCB Camp Pendleton from final critical habitat under section 4(a)(3) of the Act (see ''Application of Section 4(a)(3) of the Act'' for a detailed discussion).

Areas Removed from Critical Habitat Designation

We re-evaluated our proposed critical habitat unit boundaries, refined our mapping methodology, and used new information to remove additional lands that do not contain the physical and biological features essential to the conservation of *Navarretia fossalis*. These removed lands are as follows (see Table 1):

1. Unit 2: San Diego North Coastal Mesas Critical Habitat Unit, San Diego County. We removed approximately 117.5 ac (48 ha) of land because these areas have been developed or no longer contribute to the hydrology of the vernal pools that support *Navarretia fossalis*.

2. Unit 3: San Diego Central Coastal Mesas Critical Habitat Unit, San Diego County. We removed approximate 72 ac (29 ha) because the known occurrences have been lost to residential development and the physical and biological features essential to the conservation of *Navarretia fossalis* are no longer present.

3. Unit 4: San Diego Inland Valleys Critical Habitat Unit, San Diego County. We removed Subunit 4A (10 ac) (4 ha) and Subunit 4B (42 ac) (17 ha) in the City of San Marcos because these areas do not currently support *Navarretia fossalis*, there is no current information that *Navarretia fossalis* occurs within Subunit 4A and Subunit 4B, there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *Navarretia fossalis*. We removed portions of Subunit 4E in downtown Ramona (531 ac) (215 ha) and in other areas of the Ramona Grasslands (2,335 ac) (945 ha) (the remaining portions of Subunit 4E) because the vernal pool areas within downtown Ramona and in the other areas of the Ramona Grasslands do not currently support *Navarretia fossalis*, none of the historical occurrences are believed to be extant, there is no current information that *N. fossalis* occurs within downtown Ramona or in the other areas of the Ramona Grasslands, and there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *N. fossalis*.

4. Unit 5: San Diego Southern Coastal Mesas Critical Habitat Unit, San Diego

County. We removed Subunit 5D (150 ac) (61 ha) because there is no current or historical information that *Navarretia fossalis* occurs within Subunit 5D, there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *N. fossalis*; a portion of land identified as containing the physical and biological features essential to the conservation of *N. fossalis* in the proposed rule has been developed for the Border Infrastructure System and no longer contribute to the hydrology of the vernal pools; and (4) the vernal pool restoration work being conducted at Arnie's Point is for the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*) and not to offset any losses to *N. fossalis*.

In addition to the above revisions, we made adjustments to the boundaries of the areas included in the critical habitat designation. Adjustments were made for two reasons: (1) A selection of the 328-ft (100-m) grid cells used for Geographic Information Systems (GIS) mapping contained mostly urbanized land that is non-essential to the species; and, (2) grid cells containing all or mostly upland habitat not directly contributing to the hydrology of the vernal pools were removed. Since these areas do not contain the PCEs, we removed them from the final critical habitat designation.

TABLE 1.—SUMMARY OF CHANGES FROM THE PROPOSED RULE DESIGNATING CRITICAL HABITAT (CH) FOR NAVARRETIA FOSSALIS

	Proposed CH	Final CH	Reduction (percent)
Los Angeles County—			
Cruzan Mesa (Unit 1A)	534 ac 216 ha	294 ac 119 ha	45
Plum Canyon (Unit 1B)	62 ac 25 ha	32 ac 13 ha	48
San Diego County—			
Poinsettia Lane Commuter Station (Unit 2)	143 ac 58 ha	22 ac 9 ha	85
Santa Fe Valley (Unit 3)	143 ac 58 ha	0 ac 0 ha	100
San Marcos (Unit 4A)	10 ac 4 ha	0 ac 0 ha	100
San Marcos (Unit 4B)	42 ac 17 ha	0 ac 0 ha	100
San Marcos (Subunit 4C1 and 4C2)	99 ac 40 ha	73 ac 30 ha	26
San Marcos (Unit 4D)	10 ac 4 ha	7 ac 3 ha	30
Ramona (Unit 4E)	2,866 ac 1,160 ha	86 ac 35 ha	97
Sweetwater Vernal Pools (Unit 5A)	136 ac 55 ha	89 ac 36 ha	35
Otay River Valley (Unit 5B)	42 ac 17 ha	42 ac 17 ha	0
Otay Mesa (Unit 5C)	64 ac 26 ha	14 ac 6 ha	78
Arnie's Point (Unit 5D)	150 ac 61 ha	0 ac 0 ha	100
Total	4,301 ac 1,741 ha	652 ac 264 ha	85

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 provisions of section 4 of [the] Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of [the] Act, 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 essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific 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 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of 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

This includes information from the proposed listing rule (64 FR 71714), final listing rule (67 FR 44382), data from research and survey observations published in peer-reviewed articles, site visits, regional Geographic Information System (GIS) layers, soil, and species coverages, and data compiled in the California Natural Diversity Database (CNDDB).

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that are essential to the conservation of *Navarretia fossalis*. We reviewed and evaluated the Recovery Plan for Vernal Pools of Southern California and its supporting information and documentation (Service 1998), section 7 consultations and relevant project reports, site surveys conducted by Service biologists, research and survey observations published in peer-reviewed articles, regional GIS vegetation, soil, and species coverages, and data compiled in the California Natural Diversity Database (CNDDB).

After creating a GIS coverage of the habitat areas, we created legal descriptions of the final critical habitat boundaries. 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 critical habitat. Habitat areas with essential features were then analyzed with respect to sections 3(5)(A), 4(a)(3), and 4(b)(2) of the Act, and any locations that should not be included or excluded from proposed critical habitat were identified. We designated critical habitat on the specific areas within the geographical area occupied by the species at the time of listing on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations. In the final listing rule, we identified *Navarretia fossalis* from Otay Mesa in southern San Diego County, coastal San Diego County, Ramona in central San Diego County, and on Federal lands at Marine Corps Base Camp Pendleton and Marine Corps Air Station Miramar in central San Diego County; San Jacinto River and the Hemet area in western Riverside County and southern Riverside County; and northwestern Los Angeles County. In this rule, Unit 1 is in northwestern Los Angeles County, Unit 2 is in coastal San Diego County, Subunit 4E is in Ramona, and Subunits 5B and 5C are on Otay Mesa. We are also designating critical habitat on specific areas outside the geographic area occupied by *N. fossalis* at the time of listing upon a determination by the Secretary of the Interior that such areas are essential for the conservation of *N. fossalis*. Subunits 4C and 4D in the City of San Marcos and Subunit 5A were not specifically mentioned in the final listing rule for *N. fossalis*, but information on these occurrences are contained in our final listing rule files for this species. We believe those subunits are essential for the conservation of *N. fossalis* because these populations are needed for recovery, to maintain the geographical distribution of the species, and unique soils. The observations for Subunits 4C and 4D are dated 1993 and 1995 and the CNDDB records for *N. fossalis* at San Marcos are in our final listing rule files for this species. The observation for Subunit 5A is dated 1985 and our CNDDB record for *N. fossalis* located southeast of Sweetwater Reservoir is in our final listing rule files for this species.

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 that were within the geographical area occupied by the species at the time of listing, 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 or protection. These include, but are not

limited to: space for individual and population growth and for normal behavior; water, air, light, minerals, or other nutritional or physiological requirements; space for growth, development and reproduction, including the space necessary for pollinators to live; 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, otherwise referred to as the primary constituent elements, which comprise *Navarretia fossalis* habitat are based on specific components that provide for the essential biological needs of the species as described below.

Space for Individual and Population Growth, Including Sites for Germination, Pollination, Reproduction, Pollen and Seed Dispersal, and Seed Dormancy

Navarretia fossalis is primarily associated with vernal pools and alkali wetlands including playa and sink habitats (Moran 1977, Bramlet 1993; Day 1993) at elevations between sea level and 4,250 ft (1,300 m), and on flat to gently sloping terrain. The species also occasionally occurs in ditches and other artificial depressions that mimic vernal pool habitat (Moran 1977).

Navarretia fossalis flowers from May through June. This species has evolved mechanisms to self-pollinate (Spencer 1997). The fruit of this species consists of indehiscent (i.e., not opening spontaneously at maturity to release seeds) capsules 0.08 to 0.12 inches (in) (2 to 3 millimeters (mm)) long containing 5 to 25 seeds. The seeds develop a sticky, slimy coating when wet, which may retain moisture and aid in germination (Moran 1977). After fruiting, the species dries out and loses its color rapidly, and can be difficult to detect late in the dry season or in dry years. The number of individuals of *N. fossalis* at a given population site varies annually in response to the timing and amount of rainfall and temperature.

Sufficient studies to reveal possible pollinators of *Navarretia fossalis* have not yet been conducted. Seeds of this plant are likely dispersed locally by the flow of water throughout the vernal pool or alkali wetlands in which this plant occurs. More distant dispersal is most likely accomplished by the spiney flower heads clinging to the fur of larger mammals or via mud containing seeds stuck to birds that visit these wetlands (pers. comm. with Ellen Bauder, Ph.D., San Diego State University).

Areas That Provide Basic Requirements for Growth, Such as Water, Light, and Minerals

Navarretia fossalis requires areas that are ephemerally wet in the winter and spring months and dry in the summer and fall months. This type of ephemeral habitat does not allow either upland plants that live in a dry environment year round or wetland plants that require year round moisture to become established (Keeler-Wolf *et al.* 1998). These habitats then allow for specialized plants, such as the *N. fossalis*, to benefit from the exclusion of strictly upland and wetland plants.

Habitats That Are Representative of the Historic Geographical and Ecological Distribution of the Species

The distribution of *Navarretia fossalis* ranges from northwestern Los Angeles County and western Riverside County, south through coastal San Diego County, California to northwestern Baja California, Mexico (Day 1993; Munz 1974; Reiser 2001, CNPS 2001; CNDDB 2003). Fewer than 30 populations exist in the United States, with nearly 60 percent of these populations concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (63 FR 54975). In Mexico, *N. fossalis* is known from fewer than 10 populations clustered in three areas: along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977).

Primary Constituent Elements for Navarretia fossalis

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 primary constituent elements for *Navarretia fossalis* are:

(1) Vernal pool, alkali playa, or alkali sink habitats, at elevations between sea level and 4,250 ft (1,300 m) found on flat to gently sloping terrain;

(2) Soils with a clay component or an impermeable surface or subsurface layer known to support vernal pool habitat including, but not limited to Cieneba-Pismo-Caperton in Los Angeles County, Domino, Traver, and Willows in Riverside County and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding in San Diego. Clay soils serve to inhibit rapid infiltration of rainwater. These soils also act as a buffer to moderate the water chemistry and rate of loss of water to evaporation. Clay soils of this nature are known to support vernal pool, alkali playa, and alkali sink habitats; and,

(3) Associated hydrology that provides water to fill the pools in the winter and spring months. A pool with functional hydrology includes a combination of surface and underground water flow, native upland vegetation, and intact soil substrate. An inundated phase occurring in the winter and spring months followed by a dry phase in the summer and fall months is necessary to maintain these specialized habitats.

Criteria Used To Identify Habitat Areas With Essential Features

We have determined that approximately 22,804 ac (9,228 ha) of land in Los Angeles, Riverside, and San Diego counties contain the physical and biological features that are essential to the conservation of the species. Of this, 21,458 ac (8,684 ha) of land with essential features for the conservation of *Navarretia fossalis* Riverside and San Diego counties are exempt, pursuant to section 4(a)(3) of the Act, or have been excluded pursuant to section 4(b)(2) of the Act. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed animal 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 encourage HCP applicants to also incorporate measures to provide for the conservation of listed plant species. We often exclude from designated critical habitat non-Federal public lands and private lands that are covered by an existing operative HCP that provides for the conservation needs of the species for which critical habitat is being designated because we determine that the benefits of exclusion outweigh the benefits of inclusion as provided in section 4(b)(2) of the Act. The areas exempt under section 4(a)(3) of the Act include the following: (1) Lands on Marine Corps Air Station Miramar (MCAS, Miramar); (2) lands on Marine Corps Base, Camp Pendleton (Camp Pendleton). The areas excluded under section 4(b)(2) of the Act include the following: (1) Areas within the City of San Diego Subarea Plan and County of San Diego Subarea Plan of the San Diego Multiple Species Conservation Program (MSCP); (2) areas within the approved Carlsbad subarea plan/habitat management plan for the Northwestern San Diego Multiple Habitat Conservation Plan (MHCP); and, (3)

areas within the approved Western Riverside Multiple Species Habitat Conservation Plan (MSHCP).

The following criteria were used to map the areas with essential features for the conservation of *Navarretia fossalis:* (1) Vernal pools and alkali wetlands including grassland, playa, and sink habitats known to be occupied by *N. fossalis*; (2) localities considered essential to the conservation of the species; (3) areas of suitable topography and intact clay soil substrate, such as Cieneba-Pismo-Caperton in Los Angeles County, Domino, Traver, and Willows in Riverside County and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding in San Diego, with minimal disturbance; and, (4) local watersheds associated with occupied vernal pools and alkali wetlands necessary to maintain the hydrologic regime required to support the species.

We are designating critical habitat on lands that we have determined are occupied at the time of listing and contain the primary constituent elements and those additional areas found to be essential to the conservation of *Navarretia fossalis.*

When determining critical habitat boundaries, we made every effort to avoid designating developed areas such as buildings, paved areas, boat ramps, and other structures that lack PCEs for *Navarretia fossalis.* Any such structures inadvertently left inside critical habitat boundaries are not considered part of the designated critical habitat unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or PCEs in adjacent critical habitat.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking and in the proposed critical habitat designation (69 FR 60110).

Special Management Considerations or Protections

When designating critical habitat, we assess whether the physical and biological features determined to be essential for conservation of the species may require special management considerations or protection. All of the units designated as critical habitat contain the physical and biological features which may require special management considerations or protection. *Navarretia fossalis* is threatened by habitat destruction and fragmentation from urban and agricultural development, pipeline construction, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing to remove weeds and create fire breaks), alteration of hydrology and floodplain dynamics (including excessive flooding and channelization), and competition from alien plant species (63 FR 54975). Habitat destruction and loss is the greatest threat to this species (CNDDB 2004), followed by disruption of natural hydrologic regimes that support populations of *N. fossalis.* Projects that occur adjacent to vernal pools, or within the watershed of designated critical habitat, may alter the hydrology of the vernal pools and make conditions unsuitable for the growth and reproduction of *N. fossalis.* In some locations encroachment and competition by non-native plants for space, water, and nutrients can displace *N. fossalis.* Management of non-native weeds is necessary to maintain existing population of *N. fossalis* (Bramlet 1996).

Some of these special management considerations such as the presence of exotic species affect the success of *Navarretia fossalis* throughout its range, other threats impact *N. fossalis* on a unit-by-unit basis. For example, Unit 1A and 1B at Cruzan Mesa is occasionally used as for filming movies (pers. comm. Daryl Koutnik, Ph.D., Supervising Regional Planner, County of Los Angeles). Movie production may impact the vernal pool basins by compaction, or displace standing plants while *N. fossalis* is setting seed and flowering, or may inadvertently introduce fill material into vernal pools, thus altering the habitat.

Unit 2 is protected by a conservation easement, but the physical and biological features remain in need of special management to address invasive non-native weeds that outcompete and displace *Navarretia fossalis*, changes to the local hydrology as the surrounding watershed becomes urbanized, and unauthorized trespass that tramples plants and compacts vernal pools. *Brassica negra* (black mustard) and *Lythrum hyssopifolia* (hyssop loosestrife) are the major exotic species that require control in this unit and these non-native weeds can displace and outcompete *N. fossalis.* The watershed for this unit is nearly completely urbanized and special management considerations are needed to address the quality and quantity of the run-off into this unit.

In San Diego County the invasion of exotic grasses is of concern in Unit 4 and Unit 5 because these non-native weeds can outcompete *Navarretia fossalis* for space, water, and nutrients. *Lolium multiflorum* (annual or italian ryegrass) poses the greatest management concern because it can withstand period of inundation, produces large quantities of seed and forms a thick thatch as is dies each year.

Critical Habitat Designation

We are designating approximately 652 ac (264 ha) of critical habitat for *Navarretia fossalis* in Los Angeles and San Diego Counties, California (see Table 1). Areas designated as critical habitat are under Federal, State, local, and private ownership. The approximate area of designated critical habitat by county and land ownership is shown in Table 2. Certain lands in Riverside and San Diego counties considered essential to *N. fossalis* have not been included or have been excluded from critical habitat based on our 4(a)(3) and 4(b)(2) analyses; these are summarized in Table 3.

TABLE 2.—APPROXIMATE CRITICAL HABITAT AREA (ACRES (AC); HECTARES (HA)) FOR NAVARRETIA FOSSALIS IN CALIFORNIA BY COUNTY AND LAND OWNERSHIP. ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES

County	Federal (San Diego National Wildlife Refuge)	Private	Total
Los Angeles	0 ac (0 ha)	326 ac (132 ha)	326 ac. (132 ha).
Riverside	0 ac (0 ha)	0 ac (0 ha)	0 ac. (0 ha).

TABLE 2.—APPROXIMATE CRITICAL HABITAT AREA (ACRES (AC); HECTARES (HA)) FOR NAVARRETIA FOSSALIS IN CALIFORNIA BY COUNTY AND LAND OWNERSHIP. ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES—Continued

County	Federal (San Diego National Wildlife Refuge)	Private	Total
San Diego	42 ac (17 ha)	284 ac (72 ha)	326 ac. (88 ha).
Total	42 ac (17 ha)	610 ac (ha)	652 ac. (264 ha).

* Federal lands include Department of Defense and other Federal land.
** Not Applicable because all lands in Riverside County that are essential for *Navarretia fossalis* are excluded under 4(b)(2) of the Act.

TABLE 3.—APPROXIMATE AREAS WITH ESSENTIAL FEATURES FOR THE CONSERVATION OF NAVARRETIA FOSSALIS, EXCLUDED AREAS WITH ESSENTIAL FEATURES FOR THE CONSERVATION OF NAVARRETIA FOSSALIS, AND CRITICAL HABITAT (ACRES (AC); HECTARES (HA)) FOR NAVARRETIA FOSSALIS IN LOS ANGELES, SAN DIEGO, AND RIVERSIDE COUNTIES, CALIFORNIA.

[**Note:** Table currently being revised in Carlsbad]

Total areas with essential features for the conservation of *Navarretia fossalis*	17,908 ac. (7,247 ha).
Areas with essential features for the conservation of *Navarretia fossalis* exempted from critical habitat pursuant to section 4(a)(3) of the Act due to an INRMP that benefits *Navarretia fossalis* (Marine Corps Air Station (MCAS), Miramar and Marine Corps Base (MCB), Camp Pendleton).	128 ac. (52 ha).
Areas with essential features for the conservation of *Navarretia fossalis* excluded from critical habitat pursuant to section 4(b)(2) of the Act: Completed HCPs (San Diego Multiple Species Conservation Program (MSCP), Northwestern San Diego Multiple Habitat Conservation Plan (MHCP) and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)), Areas subject to completed conservation agreements.	18,619 ac. (7,535 ha).
Total areas with essential features for the conservation of *Navarretia fossalis* exempted or excluded from critical habitat	18,747 ac. (7,586 ha).
Total critical habitat	652 ac. (264 ha).

Lands designated as critical habitat are divided into four units (Units 1 through 5). No lands within Unit 3 were designated as critical habitat because *Navarretia fossalis* is no longer present. Units 1, 4, and 5 were further divided into subunits (1A, 1B, 4C1 and 4C2, 4D, 4E, 5A, 5B, 5C) based on their geographical location. Subunits 4A and 4B have been dropped because these areas no longer support N. fossalis. Unit boundaries were delineated based on geographical location of vernal pools, soil types, associated watersheds, and local variation of topographic position (i.e., coastal mesas, inland valley). Descriptions of each unit and the reasons for designating lands within each unit as critical habitat are presented below. We designated critical habitat on the specific areas within the geographical area occupied by the species at the time of listing on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations. We are also designating critical habitat on specific areas outside the geographic area occupied by *N. fossalis* at the time of listing upon a determination by the Secretary of the Interior that such areas are essential for the conservation of *N. fossalis.* In addition, all of the areas designated as critical habitat contain one or more primary constituent elements (e.g., soil, hydrology).

Unit 1 (Subunits 1A, 1B): Transverse Range Critical Habitat Unit, Los Angeles County, California (326 ac (132 ha)).

The occurrences of *Navarretia fossalis* in northern Los Angeles County represent isolated occurrences at the northern most extent of the range of the species. Conservation biologists have demonstrated that populations at the edge of a species' distribution can be important sources of genetic variation and represent the best opportunity for colonization or re-colonization (Gilpin and Soulé 1986; Lande 1999). Although the populations of *N. fossalis* in Los Angeles County are far removed from other known locations, these pools are possible sources of unique genetic information that will aid this highly restricted species in its ability to adapt to future changes in the environment (e.g. stochastic events such as droughts or temperature shifts). Such characteristics may not be present in other parts of the species' range (Lesica and Allendorf 1995). For these reasons the unit is essential to the conservation of the species.

The Transverse Range Critical Habitat Unit occurs within the Transverse Management Area as identified in the Recovery Plan, and includes vernal pools occupied with *Navarretia fossalis* at Cruzan Mesa and Plum Canyon in Los Angeles County (Service 1998). Vernal pools at both sites are currently on lands under private ownership. These pools are the last remaining vernal pools in Los Angeles County. The area designated as critical habitat in Unit 1 contains the primary constituent elements: vernal pools within the appropriate elevations and topography (PCE #1), soils that are impermeable and pond water (PCE #2), and hydrology to support *Navarretia fossalis.* The City of Los Angeles has identified this area as Significant Ecological Area and has recommended its inclusion in the updated version of the Los Angeles General Plan, a plan which guides development with zoning regulations.

However, these pools have not yet been included in the Los Angeles General Plan. In addition, the Service is in preliminary discussions with the landowner to establish a conservation bank for Cruzan Mesa. We understand that the landowner recognizes the biological value of the vernal pool and surrounding lands and recognizes that a conservation bank would benefit the species associated with the vernal pools (i.e. *Navarretia fossalis*) and provide a mechanism to fund habitat restoration (Service pers. comm. 2005). We also received comments from the Los Angeles County Department of Regional Planning that indicated that the landowner is requesting credit for transferring housing density to another portion of their property to conserve the vernal pool habitats (Los Angeles County 2005). Lands within this critical habitat unit may require special management to address threats to the vernal pools (PCE #1) and the hydrology (PCE #3) from current and future uses around the vernal pools that include habitat alteration resulting from movie production and potential residential and commercial development.

Unit 2: San Diego North Coastal Mesas Critical Habitat Unit, San Diego County, California (22 ac (9 ha)).

The San Diego North Coastal Mesas Critical Habitat Unit occurs within the boundaries of the City of Carlsbad. One occupied vernal pool complex is located along the railroad tracks at the Poinsettia Lane train station. This complex is associated with a remnant of coastal terrace habitat and is one of the only vernal pools in San Diego County with alkaline soil properties. This vernal pool complex is one of the last remaining coastal occurrences of *Navarretia fossalis* outside the boundaries of MCB Camp Pendleton.

This population of *Navarretia fossalis* occurs in vernal pools that are within the boundaries of the City of Carlsbad HMP and on lands that are owned by the North County Transit District (and not a signatory agency to the Carlsbad HMP). We designate 22 acres (9 ha) of critical habitat on lands only within the North County Transit District. The area being designated as critical habitat contains the primary constituent elements described above relating to the pooling basins, watersheds, underlying soil substrate, and topography (PCE 1–3). Lands within this critical habitat unit may require a long-term management plan to manage herbivores, control exotic weeds, and assess changes in water quality and quantity associated with the nearby urban areas.

We excluded 3.5 acres (1.4 ha) of vernal pools and buffer as critical habitat that are within the City of Carlsbad HMP under section 4(b)(2) of the Act. The avoidance, minimization, and/or mitigation measures and the adaptive management of lands within the Preserve that are included in the MHCP Subregional Plan and the City of Carlsbad Subarea Plan will reduce any impacts that may occur to *Navarretia fossalis.* Moreover, the 3.5 acres (1.4 ha) are within the open space lot 227 of the Waters End housing project. John Laing Homes, developer of the Waters End housing project, agreed to (1) provide maintenance and management for three years, (2) the Waters Edge Homeowners Association will assume responsibility for maintenance of the area after the three year period until the City of Carlsbad selects a management entity, (3) provide an irrevocable offer of dedication for a conservation easement to the City of Carlsbad, and (4) provide $100,000 for a maintenance endowment for open space lot 227 (John Laing Homes 2004).

The remaining 117.5 ac (48 ha) of land identified as containing the physical and biological features in the proposed rule have been developed and no longer contribute to the hydrology of the vernal pools that support *Navarretia fossalis.* These lands were not known to be occupied by *N. fossalis* at the time of proposed rule. These 117.5 ac (48 ha) do not contain the physical and biological features essential to the conservation of *N. fossalis* and are not designated as critical habitat.

Unit 3: San Diego Central Coastal Mesas Critical Habitat Unit, San Diego County, California

We proposed critical habitat for *Navarretia fossalis* in Unit 3 (72 ac) (29 ha). We have re-examined the records and available information and now conclude that the vernal pools and watersheds within Unit 3 do not currently support *N. fossalis.* We removed approximate 72 ac (29 ha) because the known occurrences have been lost to and degraded by residential development and the physical and biological features essential to the conservation of N. fossalis are no longer present. Thus, no critical habitat for *N. fossalis* is designated within Unit 3.

Unit 4 (Subunits 4C, 4D & 4E): San Diego Inland Valleys Critical Habitat Unit, San Diego County, California (160 ac (65 ha)).

The San Diego Inland Valleys Critical Habitat Unit occurs within the San Diego Inland Valleys Management Area as identified in the Recovery Plan (Service 1998). The three subunits designated as critical habitat for *Navarretia fossalis* contain occupied vernal pool complexes within the City of San Marcos and the community of Ramona. These vernal pool complexes are isolated from maritime influence and are representative of vernal pools associated with alluvial or volcanic type soils (Keeler-Wolf et al. 1998; Service 1998). These vernal pools in San Marcos and Ramona are essential for the conservation of *N. fossalis* because of their role in stabilizing populations and preventing habitat loss. Additionally, this unit includes vernal pools within the easternmost edge of the geographical distribution of the species. Therefore, conservation of pools at this location will help maintain the diversity of vernal pool habitats and their unique geological substrates, and retain the genetic diversity of these geographically distinct populations. The areas being designated as critical habitat in Unit 4 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography (PCE numbers 1–3). Special management may be required for all sub-units of this critical habitat unit. The vernal pools in San Marcos are on properties that are surrounded by urbanization. Management of these vernal pools is needed to prevent damage from uncontrolled access to the sites.

We designate 73 ac (30 ha) of critical habitat within the City of San Marcos on Subunits 4C1 (34 ac) (14 ha) and 4C2 (32 ac) (13 ha) and Subunit 4D (7 ac) (3 ha). To avoid including developed areas (i.e., those areas do not include the physical and biological features essential to the conservation of the species), we divided Subunit 4C by Linda Vista Drive (Subunit 4C1 is north of Linda Vista Drive and Subunit 4C2 is south of Linda Vista Drive) in the final rule. The vernal pools in San Marcos are associated with native grassland and a unique association of multiple species of *Brodiaea* (San Diego Biodiversity Project 1991). These vernal pools were occupied *Navarretia fossalis* at the time of listing based on available records, but these populations were not specifically identified in the final listing rule. Subunit 4D was conserved as part of the Bent Avenue Project (Service 2000). The southeastern boundary of Subunit 4D has been revised in the final rule to not include areas that have been developed (i.e., those areas do not include the physical and biological features essential to the conservation of the species).

We designate 87 ac (35 ha) of critical habitat within the Ramona grasslands in

Santa Maria Valley (Subunit 4E). The designated critical habitat is on County of San Diego and private lands that are south and southeast of Ramona Airport. These vernal pools were occupied *Navarretia fossalis* at the time of listing and are part of a complex of vernal pools that support the San Diego fairy shrimp and other rare vernal pool species. Surveys conducted in 2004 also document the presence of *N. fossalis* within the Ramona grasslands. A portion of these lands are protected as a result of improvements made to the Ramona Airport (Service 2001). The Ramona grasslands, including the designated critical habitat, is identified for acquisition and management under the California Department of Fish and Game's Ramona Grasslands Wildlife Area Conceptual Area Protection Plan (CDFG 2002) and the County of San Diego and The Nature Conservancy under the Framework Management and Monitoring Plan, Ramona Grasslands Open Space Preserve (The Nature Conservancy 2004).

We proposed critical habitat for *Navarretia fossalis* within vernal pools in downtown Ramona (531 ac) (215 ha) and in other areas of the Ramona Grasslands (2,335 ac) (945 ha) (the remaining portions of Subunit 4E). We have re-examined the records and available information and now conclude that the vernal pool areas within downtown Ramona and in the other areas of the Ramona Grassland do not currently support *N. fossalis.* The three occurrences of *N. fossalis* known at the time of listing (1983–1998) in downtown Ramona have been lost to urban development. No other current occurrence records of *N. fossalis* within downtown Ramona are available. While this species may persist in the seed bank, we are unable to confirm the presence of this species in downtown Ramona and in other areas of the Ramona Grasslands. Thus, no critical habitat for *N. fossalis* is designated within downtown Ramona and in other areas of the Ramona Grasslands because (1) none of the historical occurrences are believed to be extant, (2) there is no current information that *N. fossalis* occurs within downtown Ramona or in the other areas of the Ramona Grasslands, and (3) there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *N. fossalis.* We encourage landowners, planning boards, school districts, and local jurisdictions to understand that not designating critical habitat for *N. fossalis* within downtown Ramona and in other areas of the Ramona Grasslands does not mean that these vernal pools are not important for conservation. We recognize that the County of San Diego is preparing a subarea plan for northern San Diego County under the San Diego MSCP that will address the conservation of vernal pools in downtown Ramona and in other areas of the Ramona Grasslands. There are several vernal pool sites within downtown Ramona that would be valuable for conservation and included in a preserve system.

We proposed critical habitat for *Navarretia fossalis* within vernal pools in Subunit 4A (10 ac) (4 ha) and Subunit 4B (42 ac) (17 ha). We have re-examined the records and available information and now conclude that the vernal pool areas within Subunit 4A and Subunit 4B do not currently support *N. fossalis.* Thus, no critical habitat for *N. fossalis* is designated within Subunit 4A and Subunit 4B because (1) there is no current information that *N. fossalis* occurs within Subunit 4A and Subunit 4B and (2) there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *N. fossalis.*

Unit 5 (Subunits 5A, 5B & 5C): San Diego Southern Coastal Mesas Critical Habitat Unit, San Diego County, California (181 ac (73 ha)).

The San Diego Southern Coastal Mesas Critical Habitat Unit occurs within the Southern Coastal Mesas Management Area as identified in the Recovery Plan (Service 1998). The geographic location contains several vernal pools and other physical features essential to the conservation of *Navarretia fossalis.* The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support *N. fossalis.* The areas being proposed as critical habitat in Unit 5 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography (PCE numbers 1–3).

Subunit 5A is located to the south of the Sweetwater Reservoir on lands owned by the Sweetwater Authority (47 ac) (19 ha) and the San Diego Wildlife Refuge (42 ac) (17 ha). The Service is currently in the process of developing a restoration plan for the Refuge lands. Sweetwater Authority, along with Padre Dam Municipal Water District, Santa Fe Irrigation District, and Helix Water District, are preparing an HCP/Natural Communities Conservation Plan for their lands. In the draft plan, *Navarretia fossalis* is identified as a covered species and found on Sweetwater Authority lands. Vernal pools in this subunit of critical habitat have been negatively impacted by dense stands of *Lolium multiflorum* (annual or italian ryegrass). Units 5B and 5C are located on the eastern portion of Otay Mesa. Vernal pool complexes on the eastern half of Otay Mesa have been less impacted than the vernal pool complexes on the western half of Otay Mesa. The western half of Otay Mesa has much more light industrial and residential development that the eastern half of the Mesa and more impacts from off-road vehicles. The vernal pool complexes in these units may require special management such as invasive species control regulation of off-road vehicles.

In the proposed rule, we excluded critical habitat from a portion of Subunit 5A under section 4(b)(2) of the Act because we believed that the lands were within the San Diego MSCP. We have reviewed the available information and now recognize that these excluded lands were not within the San Diego MSCP. Instead, these excluded lands are owned by the Sweetwater Authority and the water district is not a signatory agency to the San Diego MSCP. We are not designating these lands as critical habitat because we did not notify the Sweetwater Authority of this oversight and to include these lands would be a violation of the Administrative Procedures Act.

We proposed critical habitat for *Navarretia fossalis* in Subunit 5D (150 ac) (61 ha). We have re-examined the records and available information and now conclude that the vernal pools and watersheds within Subunit 5D do not currently support *N. fossalis.* These lands were not known to be occupied by *N. fossalis* at the time of proposed rule. Thus, no critical habitat for *N. fossalis* is designated within Subunit 5D because (1) There is no current or historical information that *N. fossalis* occurs within Subunit 5D; (2) there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *N. fossalis;* (3) a portion of land identified as containing the physical and biological features essential to the conservation of *N. fossalis* in the proposed rule has been developed for the Border Infrastructure System and no longer contribute to the hydrology of the vernal pools; and (4) the vernal pool restoration work being conducted at Arnie's Point is for the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*) and not to offset any losses to *N. fossalis.*

In the proposed rule, we identified three vernal pool areas within the City of Chula Vista Multiple Species Conservation Program Subarea Plan (Chula Vista Subarea Plan) that we believed contained the physical and biological features essential to the conservation of Navarretia fossalis. We have re-examined the records and available information and now conclude that these three vernal pool areas do not support *N. fossalis.* Two of these areas were based on observations made in 1979. One of these vernal pool areas (identified as M–2) was destroyed by agriculture and the second area (identified as K–2) was comprised of a single disturbed vernal pool with intact mima mounds (RECON 1989). The third vernal pool area (identified as K–1) did not support *N. fossalis* (RECON 1989). Biological analyses for the Otay Ranch development and the Chula Vista Subarea Plan have not reported the presence of this species (RECON 1991, City of Chula Vista 2002, and Service 2003). We stated that this species is not known to occur within the Chula Vista subarea (the area within the action area where impacts are expected to occur) at the time of our analysis for the biological opinion for the issuance of the section 10(a)(1)(B) permit for this plan (Service 2003). Our biological opinion concluded that the issuance of the section 10(a)(1)(B) permit is not likely to jeopardize the continued existence of *N. fossalis.* Thus, no critical habitat for *N. fossalis* is designated within the Chula Vista subarea because (1) none of the historical occurrences are believed to be extant, (2) there is no current information that *N. fossalis* occurs within the Chula Vista subarea, and (3) there is no information that these vernal pool areas contain the physical and biological features essential to the conservation of *N. fossalis.* Moreover, the Chula Vista Subarea Plan will require pre-project surveys to determine if significant biological resources occur within a given project site. If this species occurs within the Chula Vista subarea, direct impacts may occur to this species, but would be limited because of the avoidance, minimization, and/or mitigation measures and by the system of large, interconnected blocks of habitat that will be established and preserved in perpetuity that are included in this subarea plan.

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)). Until such time as a proposed designation is finalized, any reasonable and prudent alternatives or reasonable or prudent measures included 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 its 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 *Navarretia fossalis* 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 Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that

may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of *Navarretia fossalis.* Federal activities that, when carried out, may adversely affect critical habitat for *N. fossalis* include, but are not limited to:

(1) Actions that would permanently alter the function of the underlying claypan or hardpan soil layer to hold and retain water. This would affect the duration and extent of inundation, water temperature and chemistry, and other vernal pool features beyond the tolerances of Navarretia fossalis. Damage or alternation of the claypan or hardpan soil layer would eliminate the function of this PCE for providing space for individual and population growth and for normal behavior; water and physiological requirements; and sites for breeding, reproduction and rearing of offspring. Actions that could permanently alter the function of the underlying claypan or hardpan soil layer include, but are not limited to, grading or earthmoving work that disrupts or rips into the claypan or hardpan soil layer; or and channelizing, mining, dredging, or drilling into the claypan or hardpan soil layer; and,

(2) Actions that would permanently reduce the depth of a vernal pool, and the ability of a vernal pool to pond with water, the duration and extent of inundation, water temperature and chemistry, and other vernal pool features beyond the tolerances of the *Navarretia fossalis.* Reducing the depth of the vernal pool would eliminate the function of this PCE for providing space for normal behavior and for individual and population growth, water and physiological requirements, sites for breeding, reproduction, and reduce the time available for growth and reproduction as it would accelerate the pool's drying phase. Actions that could permanently reduce the depth of the vernal pool include, but are not limited to, discharge of dredged or fill material into vernal pools and erosion of sediments from fill material, disturbance of soil profile by grading, ditch digging in and around vernal pools, earthmoving work, OHV use, grazing, vegetation removal, or construction of roads, culverts, berms or any other impediment to natural sub-surface or surface hydrological flow within the watershed for the vernal pools.

We designated critical habitat on the specific areas within the geographical area occupied by the species at the time of listing on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations. Specific areas within the geographic area occupied by the species at the time of listing include Unit 1 in northwestern Los Angeles County, Unit 2 in coastal San Diego County, Subunit 4E in Ramona, and Subunits 5B and 5C on Otay Mesa. We are also designating critical habitat on specific areas outside the geographic area occupied by *N. fossalis* at the time of listing upon a determination by the Secretary of the Interior that such areas are essential for the conservation of *N. fossalis.* We believe those subunits are essential for the conservation of *N. fossalis* because these populations are needed for recovery, to maintain the geographical distribution of the species, and unique soils. Specific areas outside the geographic area occupied by the species at the time of listing include Subunits 4C and 4D in the City of San Marcos and Subunit 5A in San Diego were not specifically mentioned in the final listing rule for *N. fossalis.* Federal agencies have previously consulted with the Service for projects that may affect *N. fossalis* in the City of San Marcos.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Application of Section 4(a)(3) of the Act—Approved and Completed INRMPs

The Sikes Act Improvements Act of 1997 (Sikes Act) (16 U.S.C. 670a) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP combines implementation of the military mission of the installation with stewardship of its natural resources. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the Department of Defense on the development and implementation of INRMPs for installations with federally listed species.

Section 318 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to address the relationship of INRMPs to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits us from designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

Marine Corps Air Station Miramar (MCAS Miramar)

MCAS Miramar completed a final INRMP in May 2000 that provides a benefit to *Navarretia fossalis.* MCAS Miramar has identified management areas with different resource conservation requirements and management concerns, and identifies them with five separate levels that correspond to their sensitivity. The majority of vernal pools and habitats that support vernal pool species, including *N. fossalis,* are located in ''Level I Management Areas (MAs).'' Preventing damage to vernal pool resources is the highest conservation priority in MAs with the ''Level I'' designation. The conservation of vernal pools in this MA is achieved through education of base personnel, proactive measures to avoid accidental impacts, and maintenance of an updated inventory of vernal pool basins and the associated vernal pool watersheds.

Since the completion of MCAS Miramar's INRMP, we have received reports on Miramar's vernal pool monitoring and restoration program and correspondence detailing the installation's expenditures on the objectives outlined in its INRMP. MCAS Miramar continues to monitor and manage its vernal pool resources, including a study on the effects of fire on vernal pool resources, vernal pool mapping and species surveys, and a study of *Agrostis avenaceae* (Pacific bentgrass), an invasive exotic grass found in some vernal pools on the base. We believe this INRMP benefits this species. MCAS Miramar contains the largest continuous block of vernal pools that remain in San Diego County (Bauder and McMillan, 1998). The vernal pool complexes occupied by *Navarretia fossalis* are mapped and regularly monitored for the presence of this species as well as other vernal pool species. The pools on MCAS Miramar which support *N. fossalis* are considered essential for the conservation of this species. The MCAS Miramar INRMP includes management strategies to conserve *N. fossalis,* a record of funding to implement those management strategies, and a monitoring program to ensure the effectiveness of the management strategies. Therefore, we find that the

INRMP for MCAS Miramar provides a benefit for *N. fossalis* and all lands on MCAS Miramar are exempt from critical habitat pursuant to section 4(a)(3) of the Act.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)

MCB Camp Pendleton completed their INRMP in November 2001, which includes the following conservation measures for vernal pool species including *Navarretia fossalis:* (1) Surveys and monitoring, studies, impact avoidance and minimization, and habitat restoration and enhancement; (2) species survey information stored in Camp Pendleton's GIS database and recorded in a resource atlas which is published and updated on a semi-annual basis; (3) use of the resource atlas to plan operations and projects to avoid impacts to *N. fossalis* and to trigger section 7 consultations if an action may affect the species. These measures are established, ongoing aspects of existing programs and/or Base directives (e.g., Range and Training Regulations) or measures that will be implemented when the current section 7 consultation for upland species (Uplands Consultation), including *N. fossalis*, is completed.

Based on the past funding history by Camp Pendleton for listed species and their Sikes Act program (including the management of *Navarretia fossalis*), we believe there is a high degree of certainty that Camp Pendleton: (1) Will continue to have the necessary staffing, funding levels, funding sources, and other resources to implement their INRMP; (2) has the legal authority, legal procedural requirements, authorizations, and regulatory mechanisms to implement their INRMP and other conservation efforts; and (3) will implement the INRMP in coordination with CDFG and the Service. We also believe that there is a high degree of certainty that the conservation efforts of their INRMP will be effective. Service biologists work closely with Camp Pendleton on a variety of endangered and threatened species issues, including *N. fossalis*. The management programs and Base directives to avoid and minimize impacts to the species' are consistent with current and ongoing section 7 consultations with Camp Pendleton. Through our cooperative relationship with Camp Pendleton and the section 7 consultation process, we can ensure that conservation efforts identified in the INRMP for *N. fossalis* will: (1) Address the nature and extent of threats; (2) provide for monitoring and reporting progress on implementation; and (3) incorporate the principles of adaptive management.

We are also in the process of completing a section 7 consultation for upland species on Camp Pendleton. Vernal pools and associated species, including *Navarretia fossalis*, are addressed in the ''Uplands Consultation.'' When this consultation is completed, Camp Pendleton will incorporate the conservation measures from the biological opinion into their INRMP. At that time, Camp Pendleton's INRMP will further clarify benefits to *N. fossalis*. Therefore, we find that the INRMP for Camp Pendleton provides a benefit for *N. fossalis* and all lands on Camp Pendleton are exempt from critical habitat pursuant to section 4(a)(3) of the Act.

Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)—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.

We are excluding critical habitat from approximately 21,384 ac (8,654 ha) of non-Federal lands within the (1) San Diego Multiple Species Conservation Program (MSCP): City of San Diego subarea plan and County of San Diego subarea plan; (2) Western Riverside MSHCP; and (3) Northwestern San Diego MHCP: City of Carlsbad Subarea Plan/Habitat Management Plan (HMP) under section 4(b)(2) of the Act. *Navarretia fossalis* is a covered species under all three of these plans. We completed our section 7 consultations on the issuance of the section 10(a)(1)(B) permit for the City of San Diego subarea plan on June 6, 1997; the County of San Diego subarea plan on March 12, 1988; the Western Riverside County MSHCP on June 22, 2004; and the City of Carlsbad HMP on November 9, 2004. The conference opinions for *Navarretia fossalis* for the City of San Diego subarea plan and County of San Diego subarea plan were both confirmed as biological opinions on December 21, 2000 (Service 2000). We confirmed that the implementation of the MSCP has not affected the continued existence of *N. fossalis*. These approved and legally operative HCPs provide special management and protection for the physical and biological features essential for the conservation *N. fossalis* 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 these HCPs 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 *N. fossalis*.

Below we first provide general background information on each HCP, followed by an analysis pursuant to section 4(b)(2) of the Act of the benefits of including lands in all three HCPs within the critical habitat designation, an analysis of the benefits of excluding these 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 these HCP lands will not result in extinction of the *Navarretia fossalis*.

San Diego Multiple Species Conservation Program (MSCP): City of San Diego Subarea Plan and County of San Diego Subarea Plan

We excluded 3,554 ac (8,654 ha) of non-Federal lands within portions of Units 3 and 5 as critical habitat that are in the San Diego MSCP under section 4(b)(2) of the Act. In southwestern San Diego County, the MSCP effort encompasses more than 236,000 ha (582,000 ac) and involves the participation of the County of San Diego, City of San Diego, and other cities and jurisdictions. This regional HCP is also a regional subarea plan under the NCCP program and was developed in cooperation with California Department of Fish and Game. The MSCP provides for the establishment of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species over the life of the permit (50 years), including *Navarretia fossalis*. The San Diego MSCP and approved subarea

plans provide measures to conserve *N. fossalis* populations in southwestern San Diego County. Surveys for *N. fossalis* are required in suitable habitat (i.e., vernal pools, ephemeral wetlands, and seasonally ponded areas). These lands are to be permanently maintained and managed for the benefit of *N. fossalis* and other covered species.

Within the City of San Diego subarea plan, approximately 63 percent of the one major population within the MSCP and five of the thirteen mapped points will be included in the Multiple Habitat Preserve Alternative (MHPA) (Service 1997). Within the MHPA, the City of San Diego will avoid impacts to this species to the maximum extent practicable. Outside the boundaries of the MHPA, the City of San Diego will require additional protection measures such as management, enhancement, restoration, and/or transplantation into the preserves (Service 1997). In our biological opinion for the issuance of a section 10(a)(1)(B) permit for the City of San Diego's MSCP subarea plan, the Service concluded that the proposed permit issuance would not appreciably reduce the likelihood of the survival and recovery of *Navarretia fossalis* because (1) The plan would provide for avoidance of impacts to wetlands to the maximum extent practicable both inside and outside the MHPA; (2) State, Federal, and local regulations will provide habitat protection resulting in no net loss of wetland acreage, value, and function for this species; (3) impact avoidance and additional measures will be provided for *Navarretia fossalis* as required under the MSCP Plan for narrow endemics; and (4) preserve management will include measures to protect against detrimental edge effects, maintain surrounding habitat for pollinators, and maintain watershed areas (Service 1997). The City of San Diego recently completed an inventory of vernal pools that identified ten vernal pool complexes that contain *Navarretia fossalis* (City of San Diego 2004). During the 2004–2005 field season, another two locations were found to contain *N. fossalis*. Of these twelve known locations that support *Navarretia fossalis*, ten are currently conserved or will be conserved in the future. Only two vernal pool complexes that contain *N. fossalis*, the vernal pool complexes known as J13 and J14, are not currently conserved. Thus, the City of San Diego subarea plan provides significant conservation and management measures for *Navarretia fossalis*.

Within the County of San Diego subarea plan, *Navarretia fossalis* qualifies as a Group A species as defined in the Biological Mitigation Ordinance (BMO) (i.e. plants that are rare, threatened, or endangered in California or elsewhere) (Service 1998). The BMO would require 80 to 100 percent preservation of any newly discovered populations on Category 3 lands (i.e. lands for which preserve and development boundaries have not been delineated, but which will be subject to the terms of the County of San Diego's BMO in order to receive take authorization) (Service 1998). Area specific management directives must include measures to protect against detrimental edge effects and conserve and maintain surrounding habitat for pollinators and as part of the hydrological system for vernal pools (Service 1998). In our biological opinion for the issuance of a section 10(a)(1)(B) permit for the County of San Diego's MSCP subarea plan, the Service concluded that the proposed permit issuance would not appreciably reduce the likelihood of the survival and recovery of *Navarretia fossalis* because (1) this plant is restricted to wetland habitats and the plan will provide for avoidance of impacts to wetlands to the maximum extent practicable; (2) State, Federal, and local regulations will provide habitat protection resulting in no net loss of wetland function and value for this species; (3) impact avoidance and additional measures will be provided to this species as required under the County Subarea Plan and the BMO for narrow endemic and Group A species on Category 3 lands; and (4) preserve management will include measures to protect against detrimental edge effects, maintain surrounding habitat for pollinators, and maintain watershed areas (Service 1998).

Northwestern San Diego Multiple Habitat Conservation Program (MHCP): City of Carlsbad Subarea Plan/Habitat Management Plan

We excluded 3.5 ac (1.4 ha) of non-Federal lands within the City of Carlsbad Subarea Plan/Habitat Management Plan (HMP) under section 4(b)(2) of the Act. The City of Carlsbad HMP is a subarea plan under the Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County. The MHCP includes an approximately 112,000 ac (45,324 ha) study area within the cities of Carlsbad, Encinitas, Escondido, San Marcos, Oceanside, Vista, and Solana Beach. The City of Carlsbad is the first city of these seven cities to complete a subarea plan and therefore the only city with conditional coverage for *Navarretia fossalis*.

This population of *Navarretia fossalis* occurs in vernal pools that are within the boundaries of the City of Carlsbad HMP and on lands that are owned by the North County Transit District (and not a signatory agency to the Carlsbad HMP). Only those 3.5 acres (1.4 ha) of vernal pools and buffer that are within the City of Carlsbad HMP are excluded as critical habitat. Moreover, the 3.5 acres (1.4 ha) are within the open space lot 227 of the Waters End housing project. John Laing Homes, developer of the Waters End housing project, agreed to (1) provide maintenance and management for three years, (2) the Waters Edge Homeowners Association will assume responsibility for maintenance of the area after the three year period until the City of Carlsbad selects a management entity, (3) provide an irrevocable offer of dedication for a conservation easement to the City of Carlsbad, and (4) provide $100,000 for a maintenance endowment for open space lot 227 (John Laing Homes 2004). In our biological opinion for the issuance of the section 10(a)(1)(B) permit to the City of Carlsbad, we stated that the proposed action would not directly impact any currently known populations and is not likely to jeopardize the continued existence or recovery of *Navarretia fossalis* (Service 2004). The avoidance, minimization, and/or mitigation measures and the adaptive management of lands within the Preserve that are included in the MHCP Subregional Plan and the City of Carlsbad Subarea Plan will reduce any impacts that may occur to *Navarretia fossalis*.

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

We excluded 17,908 ac (7,247 ha) of non-Federal lands within the Western Riverside County MSHCP under section 4(b)(2) of the Act. 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 northeastern portion of the range of *Navarretia fossalis,* which is a covered species under this plan. The Western Riverside 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 *N. fossalis* in its Biological and Conference Opinion (Service 2004).

The MSHCP has five species specific conservation objectives to conserve and monitor *Navarretia fossalis* populations: (1) Include a minimum of 6,900 ac of suitable habitat; (2) include a minimum of 13 known *N. fossalis* locations at Skunk Hollow, the Santa Rosa Plateau, the San Jacinto Wildlife Area, floodplains of the San Jacinto River from the Ramona Expressway to Railroad Canyon, and upper Salt Creek west of Hemet; (3) conduct surveys for the species; (4) include the floodplain of the San Jacinto River consistent with Objective 1, and maintain floodplain processes along the river to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change; and, (5) include 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, and maintain floodplain processes along the river to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change.

Approximately 85 percent of the areas with essential features for the conservation of *Navarretia fossalis* (15,224 acres of the 17,908 acres of areas with essential features for the conservation of *Navarretia fossalis*) 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) (14,992 ac) and by the approved Rancho Bella Vista HCP (232 acres) (see objectives 1 and 2). This area with essential features for the conservation of *Navarretia fossalis* is located at the Santa Rosa Plateau, San Jacinto Wildlife Area, along the floodplain of the San Jacinto River, and upper Salt Creek west of Hemet and includes many occurrences of *Navarretia fossalis* (see objectives 4 and 5). 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 *Navarretia fossalis*. 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 the areas with essential features for the conservation of Navarretia fossalis and occurrences of N. fossalis are expected to be conserved and managed in the MSHCP Conservation Area.

Approximately two percent of the area with essential features for the conservation of *Navarretia fossalis* (274 ac) is within the Narrow Endemic Plant Species Survey Area 4 (see conservation objective 3). In accordance with the Protection of Narrow Endemic Plant Species section of the MSHCP, 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 permittees 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 may result in additional conservation for this species. Thus, these lands that are not part of the MSHCP Conservation Area will still receive a certain level of protection under the Western Riverside MSHCP until the conservation goals for *Navarretia fossalis* have been met.

Approximately seven percent of the area with essential features for the conservation of *Navarretia fossalis* (1,272 ac) 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 *N. fossalis*. 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 vernal pools occupied by *Navarretia fossalis*.

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 MSHCP provides significant conservation benefits to *Navarretia fossalis*. These benefits include a MSHCP Conservation Area that protects a significant percentage of the area with essential features for the conservation of *Navarretia fossalis* and occurrences for *N. fossalis* and long-term management of the preserve areas. The MSHCP also provides avoidance and minimization measures, under the Protection of Narrow Endemic Plant Species and Guidelines Pertaining to the Urban/Wildlands Interface, that provide benefits to the species and watershed for *Navarretia fossalis*. Finally, the MSHCP provides oversight to ensure effective implementation.

The following analysis considers all three plans discussed above ((1) San Diego Multiple Species Conservation Program (MSCP): City of San Diego subarea plan and County of San Diego subarea plan; (2) Western Riverside MSHCP; and (3) Northwestern San Diego MHCP: City of Carlsbad Subarea Plan/Habitat Management Plan (HMP))

(1) Benefits of Inclusion

Overall, we believe that there is minimal benefit from designating critical habitat for *Navarretia fossalis* within the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP because, as explained above, these lands are already managed or will be managed for the conservation *Navarretia fossalis*. 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 *Navarretia fossalis* 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 *Navarretia fossalis.* 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 21,384 ac (8,654 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 21,384 ac (8,654 ha) of non-Federal lands would likely consider the conservation value of these lands as identified in the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP and take the necessary steps to avoid jeopardy or the destruction or adverse modification of critical habitat.

The areas excluded as critical habitat include the vernal pools that are occupied by *Navarretia fossalis* and the surrounding vernal pool watershed (the watershed is not occupied by *Navarretia fossalis*). 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 the 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 vernal pool watershed not occupied by *Navarretia fossalis*, 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 vernal pool watershed not occupied by *Navarretia fossalis* 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 HCPs to maintain watersheds for endangered species and vernal pools. For the watershed areas for *Navarretia fossalis*, both the City of San Diego Subarea Plan and County of San Diego Subarea Plan provide species-specific measures to protect against detrimental edge effects, maintain surrounding habitat for pollinators, and maintain watershed areas for *Navarretia fossalis.* Thus, these subarea plans provide a greater level of protection and management for the watersheds of vernal pools occupied by *Navarretia fossalis* than the simple avoidance of adverse effects to critical habitat. 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 vernal pools occupied by *Navarretia fossalis* than the simple avoidance of adverse effects to critical habitat. For the vernal pools along the Poinsettia train station, the surrounding watershed is completely urbanized and there is virtually no likelihood for a future section 7 consultation within these housing areas that would provide any benefit to protect the watershed. Thus, there would be no benefit to include these areas as 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 areas occupied by *Navarretia fossalis* and the surrounding vernal pool watershed, consultation for activities which may adversely affect the species, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), would be required, even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act.

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 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 *Navarretia fossalis.* The public outreach and environmental impact reviews required under the National Environmental Policy Act for the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP provided significant opportunities for public education regarding the conservation of the areas occupied by *Navarretia fossalis* and the surrounding vernal pool watershed. 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 City of San Diego

Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP to provide protection and enhancement of habitat for *Navarretia fossalis* 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 City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP as critical habitat would provide little additional educational and Federal regulatory benefits for the species. Because portions of the excluded vernal pool areas are occupied by the species, there must be consultation with the Service over any action which may affect these populations. For the surrounding vernal pool watershed not occupied by *Navarretia fossalis*, the City of San Diego Subarea Plan and County of San Diego Subarea Plan and Western Riverside County MSHCP provide management measures to protect the watershed for these vernal pools. 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 City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, Western Riverside County MSHCP, and the critical habitat proposal for this taxon and its economic analysis, and the recognition by the City of San Diego, City of Carlsbad, County of San Diego, and County of Riverside of the presence of *Navarretia fossalis* and the value of their lands for the conservation and recovery of the species. Public information signs on vernal pools and endangered species have been placed at the Poinsettia train station.

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 analyses. It does not require positive improvements or enhancement of the species status. Thus, any management plan which considers 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 City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP provide for the conservation of *Navarretia fossalis* through avoidance, minimization, and/or mitigation of impacts, management of habitat, and maintenance of watershed. The City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP provide 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 in these HCPs.

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 City of San Diego, City of Carlsbad, County of San Diego, County of Riverside, State of California, and the Service to implement the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and 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 City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP, the Service concluded that issuance of section 10(a)(1)(B) permits for these plans are 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 *Navarretia fossalis* from approximately 21,384 ac (8,654 ha) of non-Federal lands within the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and 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 the *Navarretia fossalis* within the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP outweigh the benefits of inclusion (limited educational and regulatory benefits, which are largely otherwise provided for under the HCPs) of these lands as critical habitat. The benefits of inclusion of these 21,384 ac (8,654 ha) of non-Federal lands as critical habitat are lessened because of the significant level of conservation provided to *Navarretia fossalis* under the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP (conservation of occupied and potential habitat, monitoring, and providing hydrology). In contrast, the benefits of exclusion of these 21,384 ac (8,654 ha) of non-Federal lands as critical habitat are increased because of the high level of cooperation by the City of San Diego, City of Carlsbad, County of San Diego, 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 21,384 ac (8,654 ha) of non-Federal lands will not result in extinction of *Navarretia fossalis* since these lands are conserved or will be conserved and managed for the benefit of this species pursuant to the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP. These HCPs 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 vernal pools along the Poinsettia train station are protected pursuant to an agreement with Laing Homes and the City of Carlsbad that will provide a conservation easement, long-term maintenance, and a maintenance endowment fund. This level of protection would occur regardless of whether these lands are excluded as critical habitat. In our biological opinion for the issuance of a section 10(a)(1)(B) permit for the City of San Diego subarea plan and County of San Diego subarea plan, the Service concluded that the proposed permit issuances would not appreciably reduce the likelihood of the survival and recovery of *Navarretia fossalis* because of the avoidance measures, management, and preserve system. The Service concluded that the Western Riverside County MSHCP would not jeopardize the continued existence of *N. fossalis* 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.

Critical habitat is being designated for *Navarretia fossalis* in other areas that will be accorded the protection from adverse modification by federal actions using the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. Additionally, the species within the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and 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 21,384 ac (8,654 ha) within the City of San Diego Subarea Plan and County of San Diego Subarea Plan, City of Carlsbad HMP, and Western Riverside County MSHCP will not result in extinction of *Navarretia fossalis*.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific data 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 51742). 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 *Navarretia fossalis*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis determined that costs involving conservation measures for *Navarretia fossalis* would be incurred for activities involving residential, industrial, and commercial

development, water supply, flood control, transportation, agriculture, the development of HCPs, and the management of military bases, other Federal lands, and other public or conservation lands.

Pre-designation costs include those *Navarretia fossalis*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Navarretia fossalis* was listed as endangered (October 1998), but prior to the final designation of critical habitat. The total pre-designation costs are estimated at $7.9 million.

Post-designation effects include likely future costs associated with *Navarretia fossalis* conservation efforts following the final designation of critical habitat in October 2005, effectively 2006 through 2025. If critical habitat is designated as proposed, total costs would be expected to range between $13.9 and $32.1 million over the next 20 years (an annualized cost of $1.3 to $3.0 million). Costs will be less due to significant reductions made to critical habitat in this final rule (see ''Summary of Changes from Proposed Rule'').

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 for downloading 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 the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than $12.2 million per year, we do not anticipate that this final rule will 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 reviewed the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 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 proposed designation of critical habitat for *Navarretia fossalis* 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, industrial 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.

If this proposed critical habitat designation is made final, 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. Our analysis determined that costs involving conservation measures for *Navarretia fossalis* would be incurred for activities involving residential, industrial, and commercial development, water supply, flood control, transportation, agriculture, the development of HCPs, and the management of military bases, other Federal lands, and other public or conservation lands.

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. Critical habitat designation is expected to result in additional costs to real estate development projects due to mitigation and other conservation costs that may be required. The affected land is located within Riverside, San Diego, and Los Angeles counties (although the proposed designation is contained in only Los Angeles and San Diego counties) and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. For businesses involved with land development, the relevant threshold for ''small'' is annual revenues of $6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (e.g., excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders. Land subdivision precedes actual construction, and typically includes residential properties, but may also include industrial and commercial properties.

It is likely that development companies, the entities directly impacted by the regulation, would not bear the additional cost of *Navarretia fossalis* conservation (approximately $2.3 to $6.7 million annualized) within the areas with essential features for the conservation of *Navarretia fossalis,* but

pass these costs to the landowner through a lower land purchase price. Considering approximately 65 percent of the developable land within the areas with essential features for the conservation of *Navarretia fossalis* is classified as agriculture land, it is likely that farmers will bear some of the costs. The remaining 35 percent of the potentially developable land is privately owned and classified as vacant. To comply with the SBA recommendation that Federal agencies consider impacts to entities that may be indirectly affected by the proposed regulation, this screening level analysis presents information on land subdivision and farming businesses for Riverside, San Diego, and Los Angeles counties as these are the businesses that would likely be impacted directly or indirectly by the regulation. The majority of the land subdivision and farming businesses within the counties are considered small businesses.

It is important to note that the identity and number of land subdivision and farming businesses potentially impacted by the critical habitat designation is not known. In addition, the identity and number of affected businesses classified as ''small'' is also not known. Nevertheless, the county-level information is the smallest region for which data relevant to this analysis exist (see Table A–1 in the Draft Economic Analysis). This clearly over represents the potential number of small businesses impacted by development-related *Navarretia fossalis* conservation efforts as the privately owned developable land within the areas with essential features for the conservation of *Navarretia fossalis* (approximately 15,084 ac (6,104.5 ha)) comprises less than two-tenths of one percent of the land area in the counties (9,908,520 ac (4,009,978 ha)), and only 2,969 ac (1,201.6 ha) of this private land is forecasted to be developed between 2006 and 2025. The effects on small businesses in the land development sector would be concentrated in San Diego County, where more than 65 percent of the development is expected to take place. Within the proposed critical habitat designation, the effects on small businesses in the land development sector would be concentrated in Ramona, where approximately 30 percent of the development in the proposed critical habitat designation is forecast to take place (Unit 4E).

While the identity and number of land subdivision and farming business impacted by the critical habitat designation is not known, this analysis relates the economic impacts to real estate prices in the three counties that encompass the areas with essential features for the conservation of *Navarretia fossalis* (see Table A–2 in the Draft Economic Analysis). *Navarretia fossalis*-related conservation efforts are expected to cost between $390 and $11,300 per residential dwelling unit developed, $0.81 to $5.90 per square foot of commercial property developed, and $0.53 to $3.82 per square foot of industrial property developed, depending on residential dwelling unit density, lot coverage (i.e., the percent of the lot developed), and conservation and mitigation activities required. The median sales price for single family residences in the counties ranged from $315,000 to $460,000 in 2004,357 and the weighted average sales price of commercial and industrial properties in 2004 ranged from $130 to $293 and $50 to $180 per square foot, respectively. Thus, the economic impacts of *Navarretia fossalis* conservation to the development industry are equal to 0.1 percent to 2.9 percent of the 2004 median price of a single family residence, 0.4 percent to 4.5 percent of the 2004 weighted average sales price of commercial property, and 0.4 percent to 5.4 percent of the 2004 weighted average sales price of industrial property. These costs may be borne by the developer or passed on to the landowner through a lower land purchase price.

Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Los Angeles, Riverside or San Diego Counties. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business 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 proposed 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 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) As discussed in the draft economic analysis of the proposed designation of critical habitat for *Navarretia fossalis,* there are 12 city governments are either adjacent to or bisect the areas with essential features for the conservation of *Navarretia fossalis:* Moreno Valley (population 142,381), Perris (population 36,189), Lakeview (population 1,619), Nuevo (population 4,135), Winchester (population 2,155), Hemet (population 58,812), Temecula (population 57,716), San Marcos (population 54,977), Carlsbad (population 78,247), Ramona (population 15,691), San Diego (population 1,223,400) and Chula Vista (population 173,556). Moreno Valley, Hemet, Temecula, San Marcos, Carlsbad, San Diego, and Chula Vista exceed the criteria (service population of 50,000 or less) for small entity.'' However, there is no record of consultation between the Service and the five remaining ''small'' governments, the City of Perris, Lakeview, Nuevo, Winchester, and Ramona, since the *Navarretia fossalis* was listed in 1998. Indeed, it is not likely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects (such as the City of Perris with the San Jacinto River Flood Control Project). Any cost associated with this activity/involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that the designation of critical habitat for *Navarretia fossalis* will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Navarretia fossalis* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the 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 *Navarretia fossalis.*

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 essential for the conservation of *Navarretia fossalis.*

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice 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) revise the entry for ''*Navarretia fossalis*'' under ''Flowering Plants'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Navarretia fossalis ...	Spreading navarretia.	U.S.A. (CA), Mexico (Baja California).	Polemoniaceae	T	650	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.96(a), add critical habitat for *Navarretia fossalis* in alphabetical order under Family Polemoniaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Polemoniaceae: *Navarretia fossalis* (spreading navarretia)

(1) Critical habitat units for *Navarretia fossalis* are depicted for San Diego and Los Angeles Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Navarretia fossalis* are:

(i) Vernal pool, alkali playa, or alkali sink habitats, at elevations between sea level and 4,250 ft (1,300 m) found on flat to gently sloping terrain;

(ii) Soils with a clay component or an impermeable surface or subsurface layer known to support vernal pool habitat including, but not limited to: Cieneba-Pismo-Caperton in Los Angeles County; Domino, Traver, and Willows in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding in San Diego. Clay soils serve to inhibit rapid infiltration of rainwater. These soils also act as a buffer to moderate the water chemistry and rate of loss of water to evaporation. Clay soils of this nature are known to support vernal pool, alkali playa, and alkali sink habitats; and

(iii) Associated hydrology that provides water to fill the pools in the winter and spring months. A pool with functional hydrology includes a combination of surface and underground water flow, native upland vegetation, and intact soil substrate. An inundated phase occurring in the winter and spring months followed by a dry phase in the summer and fall months is necessary to maintain these specialized habitats.

(3) Critical habitat for *Navarretia fossalis* does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas, not containing one or more of the primary constituent elements.

(4) *Exclusions from the critical habitat designation.* Lands determined to be essential to the conservation of *Navarretia fossalis* and that have been excluded from critical habitat designation, are:

(i) *Exclusions under section 4(b)(2) of the Endangered Species Act of 1973, as amended.* The areas excluded under section 4(b)(2) of the Act include the following:

(A) Areas within the City of San Diego Subarea Plan and County of San Diego Subarea Plan of the San Diego Multiple Species Conservation Program (MSCP);

(B) Areas within the approved Carlsbad subarea plan/habitat management plan for the Northwestern San Diego Multiple Habitat Conservation Plan (MHCP);

and, (C) Areas within the approved Western Riverside Multiple Species Habitat Conservation Plan (MSHCP).

(ii) [Reserved.]

(5) All map units are in the Universal Transverse Mercator (UTM) coordinate system, North American Datum of 1927 (NAD27) projection. Index map of critical habitat units for *Navarretia fossalis* (spreading navarretia) follows:

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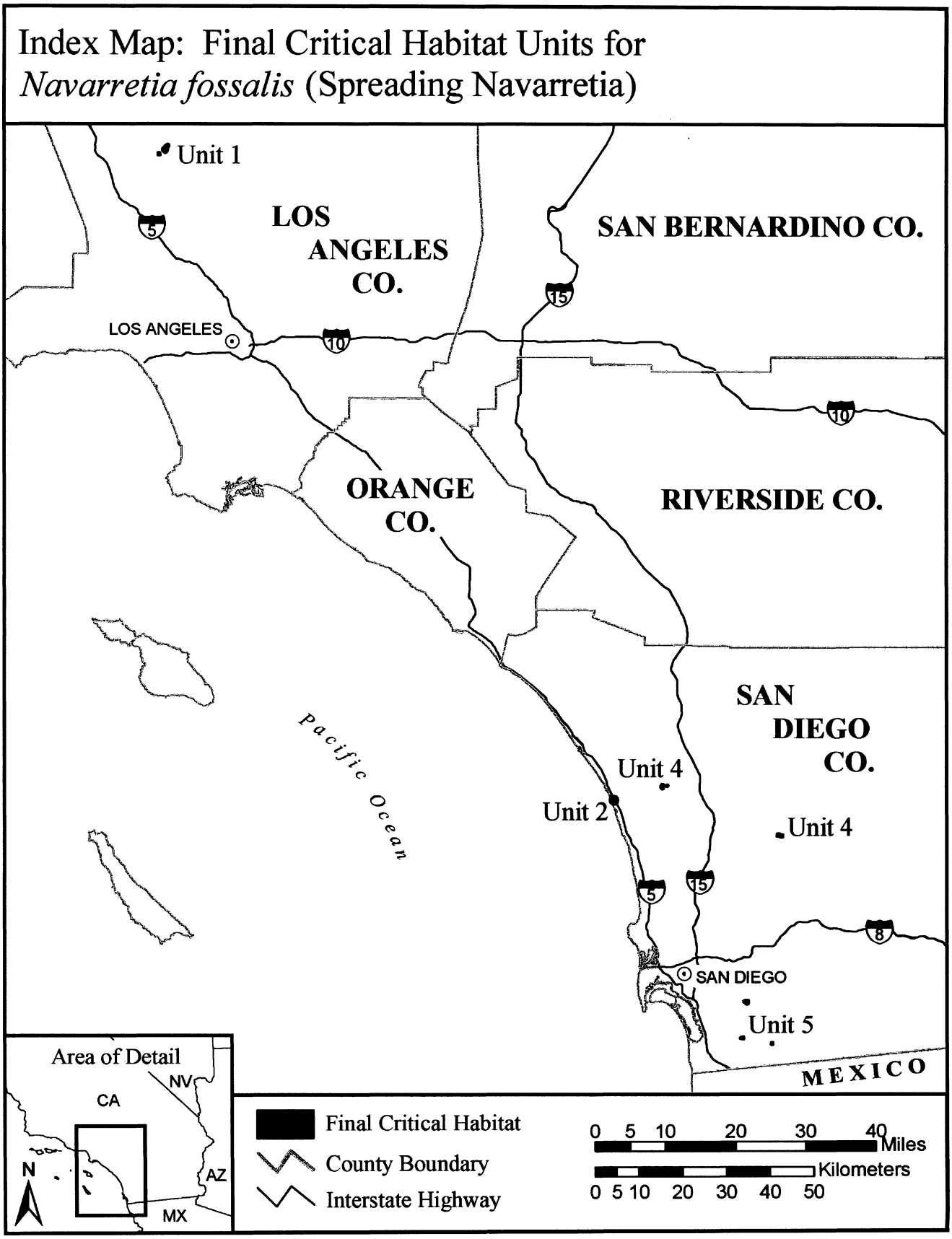
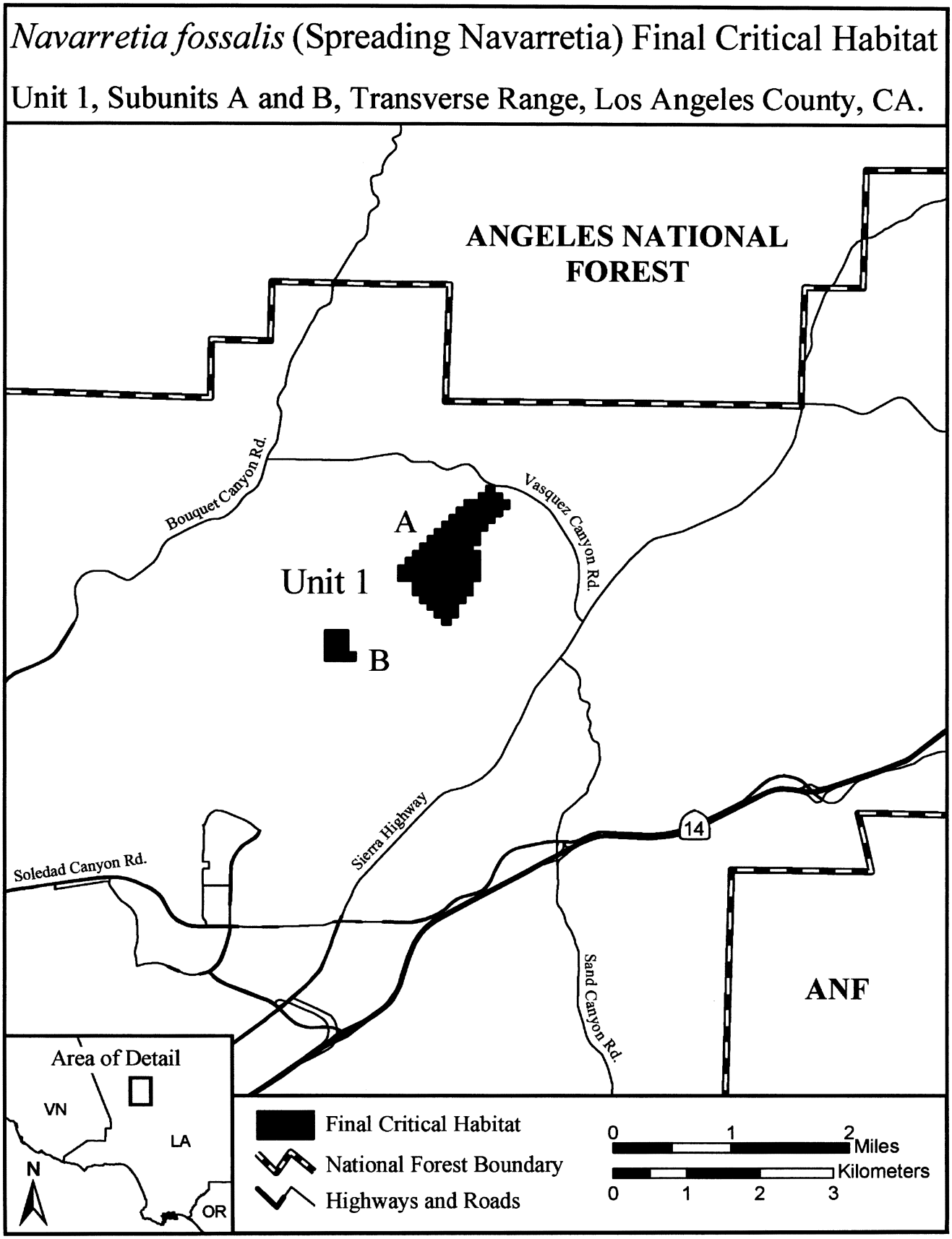

Index Map: Final Critical Habitat Units for
Navarretia fossalis (Spreading Navarretia)
Unit 1
LOS ANGELES CO.
SAN BERNARDINO CO.
LOS ANGELES
ORANGE CO.
RIVERSIDE CO.
SAN DIEGO CO.
Pacific Ocean
Unit 4
Unit 2
Unit 4
SAN DIEGO
Unit 5
MEXICO
Area of Detail
NV
CA
AZ
MX
N
Final Critical Habitat
County Boundary
Interstate Highway
0 5 10 20 30 40 Miles
0 5 10 20 30 40 50 Kilometers

(6) Unit 1: Transverse Unit. Los Angeles County, California, from USGS 1:24,000 quadrangle map Mint Canyon, California.

(i) Subunit 1A: Land bounded by the following UTM NAD 27 coordinates (E, N): 368300, 3815100; 368400, 3815100; 368400, 3815000; 368500, 3815000; 368500, 3814900; 368600, 3814900; 368600, 3814800; 368500, 3814800; 368500, 3814700; 368400, 3814700; 368400, 3814600; 368300, 3814600; 368300, 3814500; 368200, 3814500; 368200, 3814300; 368100, 3814300; 368100, 3814200; 368200, 3814200; 368200, 3813800; 368100, 3813800; 368100, 3813600; 368000, 3813600; 368000, 3813500; 367900, 3813500; 367900, 3813300; 367800, 3813300; 367800, 3813200; 367700, 3813200; 367700, 3813300; 367600, 3813300; 367600, 3813400; 367500, 3813400; 367500, 3813500; 367400, 3813500; 367400, 3813600; 367300, 3813600; 367300, 3813800; 367100, 3813800; 367100, 3814000; 367200, 3814000; 367200, 3814100; 367300, 3814100; 367300, 3814200; 367400, 3814200; 367400, 3814300; 367500, 3814300; 367500, 3814400; 367600, 3814400; 367600, 3814500; 367700, 3814500; 367700, 3814600; 367800, 3814600; 367800, 3814700; 367900, 3814700; 367900, 3814800; 368000, 3814800; 368000, 3814900; 368200, 3814900; 368200, 3815000; 368300, 3815000; returning to 368300, 3815100.

(ii) Subunit 1B: Land bounded by the following UTM NAD 27 coordinates (E, N): 366100, 3813100; 366400, 3813100; 366400, 3812800; 366500, 3812800; 366500, 3812700; 366100, 3812700; returning to 366100, 3813100.

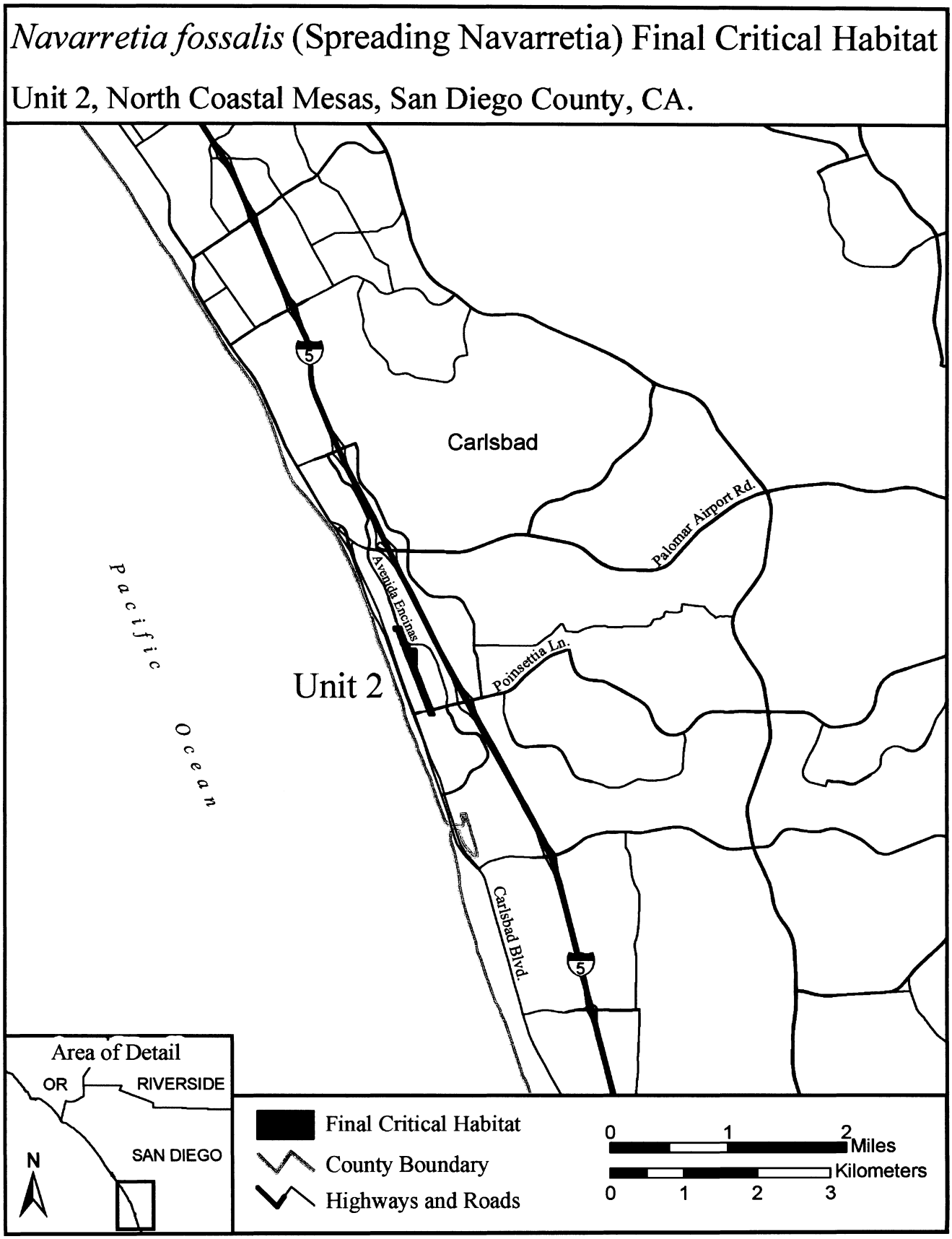
(iii) **Note:** Map of final Unit 1, subunits A and 1B for *Navarretia fossalis* (spreading navarretia) follows:


Navarretia fossalis (Spreading Navarretia) Final Critical Habitat
Unit 1, Subunits A and B, Transverse Range, Los Angeles County, CA.
ANGELES NATIONAL FOREST
Bouquet Canyon Rd.
Vasquez Canyon Rd.
A
Unit 1
B
Sierra Highway
14
Soledad Canyon Rd.
Sand Canyon Rd.
ANF
Area of Detail
VN
LA
N
OR
Final Critical Habitat
National Forest Boundary
Highways and Roads
0 1 2 Miles
0 1 2 3 Kilometers

(7) Unit 2: San Diego, North Coastal Mesas Unit. San Diego County, California, from USGS 1:24,000 quadrangle map Encinitas, California,

(i) Land bounded by the following UTM NAD 27 coordinates (E, N): 470100, 3663600; thence east to the North San Diego County Transit (NSDCT) boundary at UTM y-coordinate 3663600; thence south following the NSDCT boundary to UTM x-coordinate 470300; thence south to UTM coordinates 470300, 3663300; thence east to the NSDCT boundary at UTM y-coordinate 3663300; thence southeast following the NSDCT boundary lands to UTM x-coordinate 470400; thence south following UTM x-coordinate 470400 to the NSDCT boundary; thence west and south following the NSDCT boundary to UTM y-coordinate 3662400; thence west following UTM y-coordinate 3662400 to the NSDCT boundary; thence northwest following the NSDCT boundary to UTM x-coordinate 470400; thence north along UTM x-coordinate 470400 to UTM coordinates 470400, 3662900; thence west to NSDCT lands at UTM y-coordinate 3662900; thence northwest following the NSDCT boundary returning to UTM coordinates 470100, 3663600.

(ii) **Note:** Map of Unit 2 for *Navarretia fossalis* (spreading navarretia) follows:


Navarretia fossalis (Spreading Navarretia) Final Critical Habitat
Unit 2, North Coastal Mesas, San Diego County, CA.
Carlsbad
Palomar Airport Rd.
Avenida Encinas
Poinsettia Ln.
Unit 2
Pacific Ocean
Carlsbad Blvd.
5
Area of Detail
OR
RIVERSIDE
SAN DIEGO
N
Final Critical Habitat
County Boundary
Highways and Roads
0 1 2 Miles
0 1 2 3 Kilometers

(8) Unit 4: Inland Valleys Unit. San Diego County, California, from USGS 1:24,000 quadrangle maps Ramona, San Marcos, and San Pasqual, California.

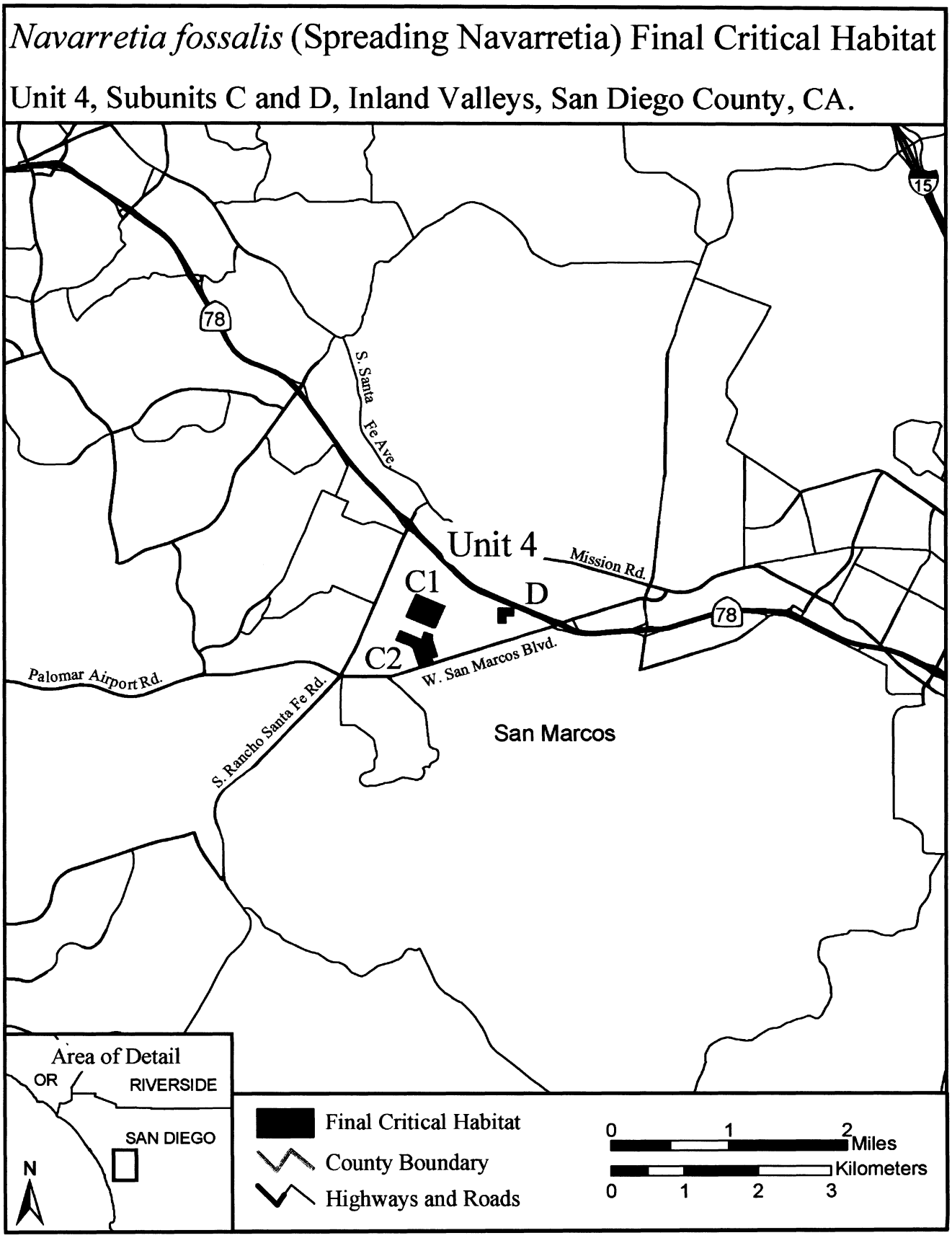
(i) Subunit 4C1: In San Marcos, California, land bounded by La Mirada Drive on the northeast, Las Posas Road on the southeast, Linda Vista Drive on the southwest, and Pacific Street on the northwest.

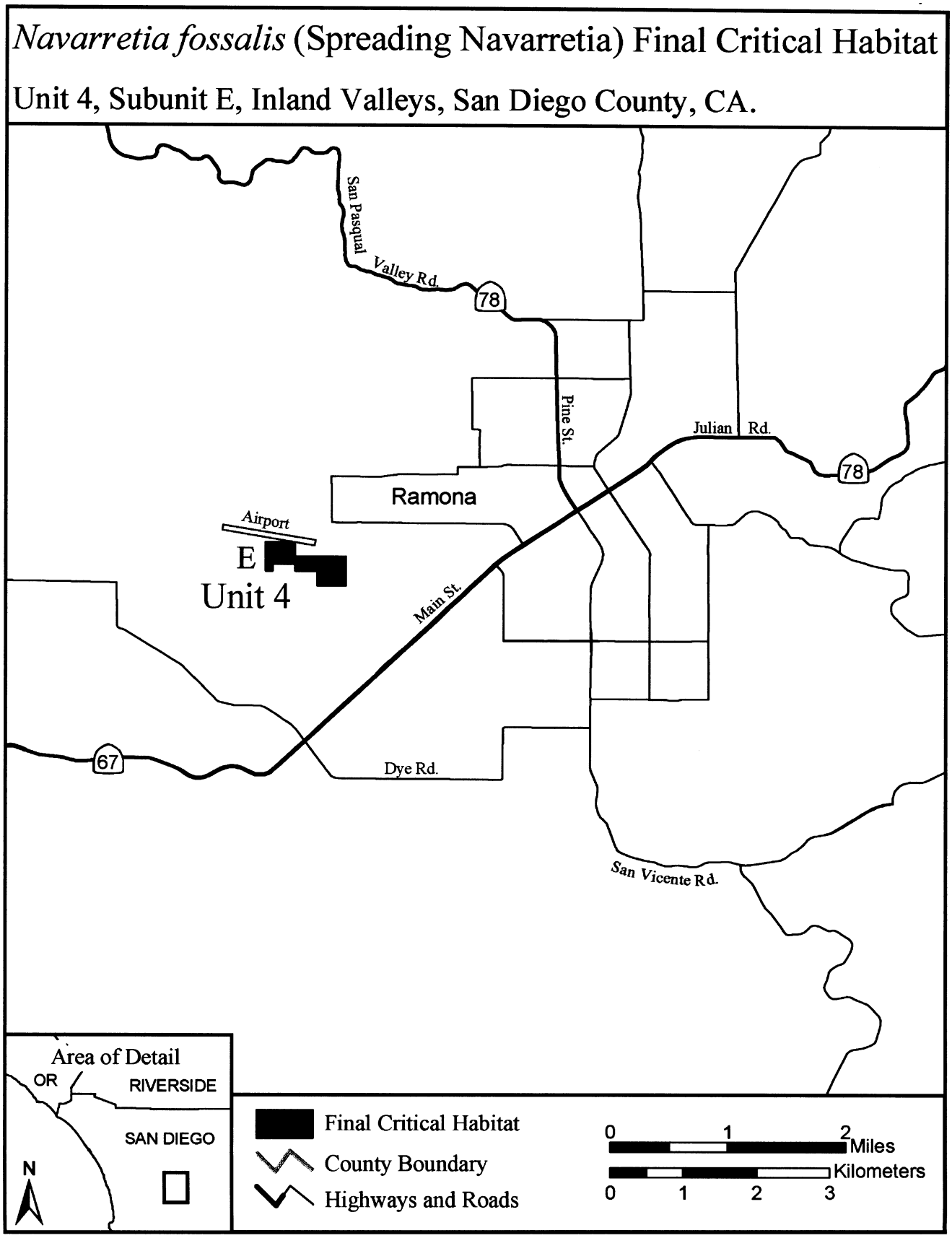
(ii) Subunit 4C2: In San Marcos, California, land within the following boundary: beginning at the northeast corner of San Marcos Boulevard and Pacific Street, thence northwest along Pacific Steet to UTM y-coordinate 3666290; thence to 481750, 3666160; 481790, 3666270; thence southeast to y-coordinate 3666230 at Las Posas Road; thence southeast along Las Posas Road to y-coordinate 3665940; thence to 481880, 3665920; thence southeast to x-coordinate 481900 at San Marcos Boulevard; thence southwest along San Marcos Boulevard returning to the northeast corner of San Marcos Boulevard and Pacific Street.

(iii) Subunit 4D: Land bounded by the following UTM NAD 27 coordinates (E, N): 482800, 3666600; 483000, 3666600; 483000, 3666500; 482900, 3666500; 482900, 3666400; 482800, 3666400; returning to 482800, 3666600.

(iv) Subunit 4E: Land bounded by the following UTM NAD 27 coordinates (E, N): 508100, 3655300; 508500, 3655300; 508500, 3655100; 509200, 3655100; 509200, 3654700; 508800, 3654700; 508800, 3654900; 508500, 3654900; 508500, 3655000; 508200, 3655000; 508200, 3654900; 508100, 3654900; returning to 508100, 3655300.

(v) **Note:** Map of Unit 4, Subunits C1, C2, and D, and Map of Unit 4, Subunit E for *Navarretia fossalis* (spreading navarretia) follow:


Navarretia fossalis (Spreading Navarretia) Final Critical Habitat
Unit 4, Subunits C and D, Inland Valleys, San Diego County, CA.
15
78
S. Santa Fe Ave.
Unit 4
Mission Rd.
C1
D
C2
78
W. San Marcos Blvd.
Palomar Airport Rd.
S. Rancho Santa Fe Rd.
San Marcos
Area of Detail
OR
RIVERSIDE
SAN DIEGO
N
Final Critical Habitat
County Boundary
Highways and Roads
0 1 2 Miles
0 1 2 3 Kilometers


Navarretia fossalis (Spreading Navarretia) Final Critical Habitat
Unit 4, Subunit E, Inland Valleys, San Diego County, CA.
San Pasqual Valley Rd.
78
Pine St.
Julian Rd.
78
Ramona
Airport
E
Unit 4
Main St.
67
Dye Rd.
San Vicente Rd.
Area of Detail
OR
RIVERSIDE
SAN DIEGO
N
Final Critical Habitat
County Boundary
Highways and Roads
0 1 2 Miles
0 1 2 3 Kilometers

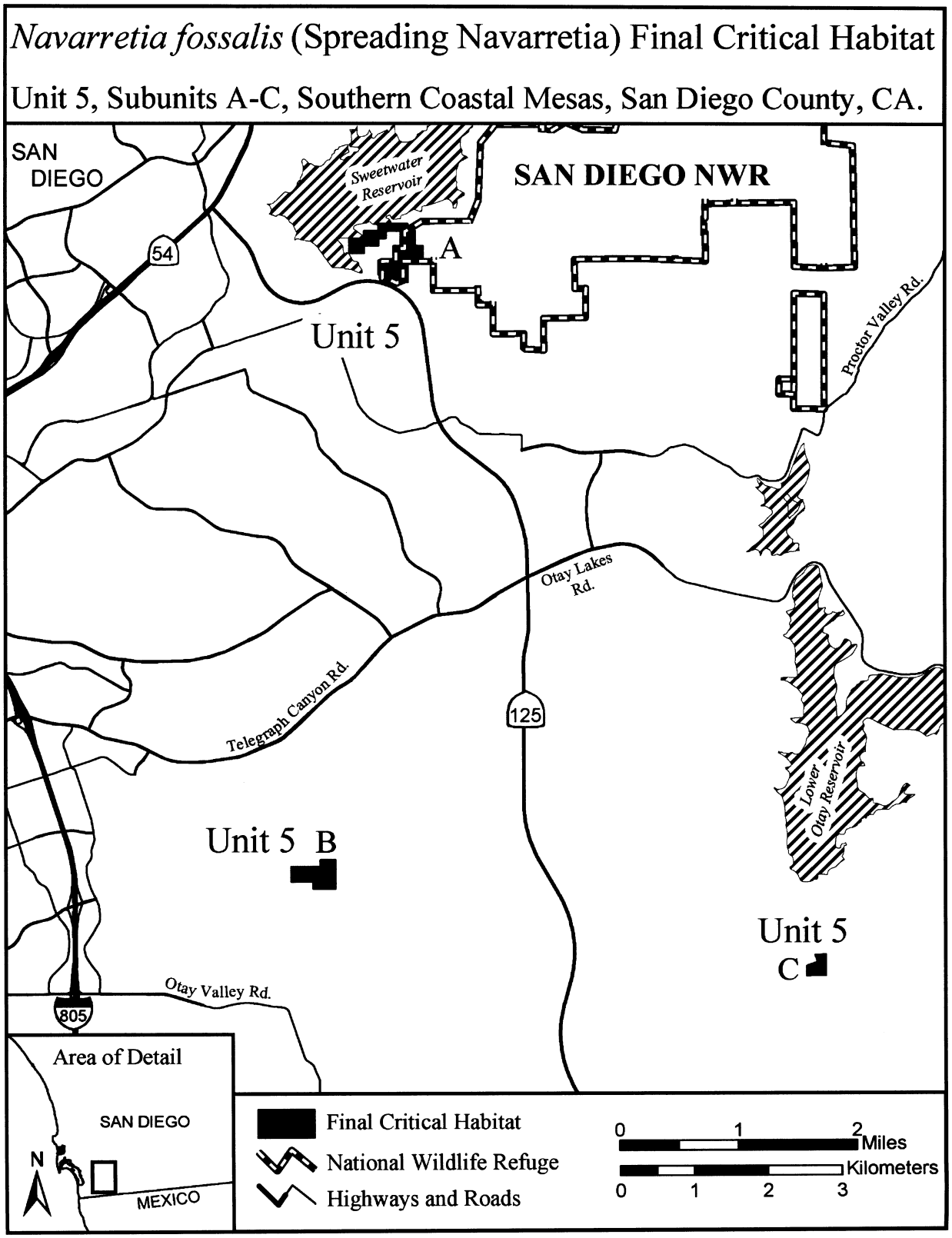
(9) Unit 5: San Diego, Southern Coastal Mesas Unit. San Diego County, California, from USGS 1:24,000 quadrangle maps Imperial Beach, Jamul Mountains, and Otay Mesa, California.

(i) Subunit 5A: Land bounded by the following UTM NAD 27 coordinates (E, N): 500800, 3616700; 501200, 3616700; 501200, 3616600; 501300, 3616600; 501300, 3616400; 501400, 3616400; 501400, 3616200; 501200, 3616200; 501200, 3615900; 500900, 3615900; 500900, 3616000; 500800, 3616000; 500800, 3616200; 501000, 3616200; 501000, 3616400; 501100, 3616400; 501100, 3616600; 500900, 3616600; 500900, 3616500; 500800, 3616500; 500800, 3616400; 500600, 3616400; 500600, 3616300; 500400, 3616300; 500400, 3616500; 500600, 3616500; 500600, 3616600; 500800, 3616600; returning to 500800, 3616700.

(ii) Subunit 5B: Land bounded by the following UTM NAD 27 coordinates (E, N): Map Unit 5B 499900, 3607600; 499900, 3607700; 499600, 3607700; 499600, 3607900; 500000, 3607900; 500000, 3608000; 500200, 3608000; 500200, 3607600; returning to 499900, 3607600.

(iii) Subunit 5C: Beginning at the County of San Diego Amendment Area (CSDAA) boundary at UTM NAD 27 y-coordinate 3606700; thence east and around the CSDAA; thence south to the CSDAA boundary at UTM y-coordinate 3606400; thence west following UTM NAD 27 coordinates (E, N): 506600, 3606400; thence north to the City of Chula Vista (CCV) boundary at UTM NAD 27 x-coordinate 506600; thence northeast along the CCV boundary returning to the point of beginning at the CSDAA boundary at UTM NAD 27 y-coordinate 3606700.

(iv) **Note:** Map of Unit 5, Subunits A, B, and C for *Navarretia fossalis* (spreading navarretia) follows:



* * * * *

Dated: September 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20147 Filed 10–17–05; 8:45 am]

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Federal Register

Tuesday,
October 18, 2005

Part IV

The President

Executive Order 13387—2005 Amendments to the Manual for Courts-Martial, United States

Federal Register
Vol. 70, No. 200
Tuesday, October 18, 2005

Presidential Documents

Title 3—

The President

Executive Order 13387 of October 14, 2005

2005 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473, as amended, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 103(2) is amended by replacing the word ''without'' with the word ''with'' and by replacing the word ''noncapital'' with the word ''capital''.

(b) R.C.M. 201(e)(2)(B) is amended by adding the word ''general'' between the words ''convene'' and ''courts-martial'' and by inserting the following words after ''armed forces'':

''assigned or attached to a combatant command or joint command''.

(c) R.C.M. 201(e)(2)(C) is amended by inserting the words ''assigned or attached to a joint command or joint task force,'' immediately before the words ''under regulations which the superior command may prescribe''.

(d) R.C.M. 201(e)(3) is amended by inserting the following immediately after the words ''armed force'':

'', using the implementing regulations and procedures prescribed by the Secretary concerned of the military service of the accused,''.

(e) R.C.M. 201(e)(4) is amended by adding the words '', member, or counsel'' after the words ''military judge''.

(f) R.C.M. 201(f)(1)(A)(iii)(b) is amended to read as follows:

''(b) The case has not been referred with a special instruction that the case is to be tried as capital.''

(g) R.C.M. 307(c)(4) is amended by inserting the following at the end thereof:

''What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.''

(h) R.C.M. 501(a)(1) is amended to read as follows:

''(1) General courts-martial.

(A) Except in capital cases, general courts-martial shall consist of a military judge and not less than five members, or of the military judge alone if requested and approved under R.C.M. 903.

(B) In all capital cases, general courts-martial shall consist of a military judge and no fewer than 12 members, unless 12 members are not reasonably available because of physical conditions or military exigencies. If 12 members are not reasonably available, the convening authority shall detail the next lesser number of reasonably available members under 12, but in no event fewer than five. In such a case, the convening authority shall state in the convening order the reasons why 12 members are not reasonably available.''

(i) R.C.M. 503(a)(3) is amended by deleting ''court-martial'' and inserting ''courts-martial'' in lieu thereof.

(j) R.C.M. 503(b)(3) is amended by inserting the words '', a combatant command or joint command'' after the words ''A military judge from one armed force may be detailed to a court-martial convened in a different armed force''.

(k) R.C.M. 503(c)(3) is amended by inserting the words '', a combatant command or joint command'' after the words ''A person from one armed force may be detailed to serve as counsel in a court-martial in a different armed force''.

(l) R.C.M. 504, (b)(2)(A) is amended by inserting the following at the end thereof:

''A subordinate joint command or joint task force is ordinarily considered to be ''separate or detached.''''

(m) R.C.M. 504, (b)(2)(B) is amended by deleting the word ''or'' at the end of the first element thereof, by deleting the period and adding '' ; or'' at the end of the second element thereof, and by inserting the following as a third element:

''(iii) In a combatant command or joint command, by the officer exercising general court-martial jurisdiction over the command.''

(n) R.C.M. 805(b) is amended by replacing the current second sentence with the following:

''No general court-martial proceeding requiring the presence of members may be conducted unless at least five members are present, or in capital cases, at least 12 members are present except as provided in R.C.M. 501(a)(1)(B), where 12 members are not reasonably available because of physical conditions or military exigencies. No special court-martial proceeding requiring the presence of members may be conducted unless at least three members are present except as provided in R.C.M. 912(h).''

(o) R.C.M. 912(f)(4) is amended by deleting the fifth sentence and by inserting the following words immediately after the words ''When a challenge for cause has been denied'' in the fourth sentence:

''the successful use of a peremptory challenge by either party, excusing the challenged member from further participation in the court-martial, shall preclude further consideration of the challenge of that excused member upon later review. Further,''

(p) R.C.M. 1003(b)(2) is amended by replacing the word ''foreign'' with the word ''hardship.''

(q) R.C.M. 1004(b) is amended by inserting the following after ''(1) Notice.'' and before the word ''Before'':

''(A) Referral. The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided:

(i) that the convening authority has otherwise complied with the notice requirement of subsection (B); and

(ii) that if the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy.

(B) Arraignment.''

(r) Insert the following new R.C.M. 1103A after R.C.M. 1103:

''Rule 1103A. Sealed exhibits and proceedings.

(a) *In general.* If the record of trial contains exhibits, proceedings, or other matter ordered sealed by the military judge, the trial counsel shall

cause such materials to be sealed so as to prevent indiscriminate viewing or disclosure. Trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the military judge, and inserted at the appropriate place in the original record of trial. Copies of the record shall contain appropriate annotations that matters were sealed by order of the military judge and have been inserted in the original record of trial. This Rule shall be implemented in a manner consistent with Executive Order 12958, as amended, concerning classified national security information.

(b) *Examination of sealed exhibits and proceedings.* Except as provided in the following subsections to this rule, sealed exhibits may not be examined.

(1) *Examination of sealed matters.* For the purpose of this rule, ''examination'' includes reading, viewing, photocopying, photographing, disclosing, or manipulating the documents in any way.

(2) *Prior to authentication.* Prior to authentication of the record by the military judge, sealed materials may not be examined in the absence of an order from the military judge based on good cause shown.

(3) *Authentication through action.* After authentication and prior to disposition of the record of trial pursuant to Rule for Courts-Martial 1111, sealed materials may not be examined in the absence of an order from the military judge upon a showing of good cause at a post-trial Article 39a session directed by the Convening Authority.

(4) *Reviewing and appellate authorities.*

(A) Reviewing and appellate authorities may examine sealed matters when those authorities determine that such action is reasonably necessary to a proper fulfillment of their responsibilities under the Uniform Code of Military Justice, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility.

(B) Reviewing and appellate authorities shall not, however, disclose sealed matter or information in the absence of:

(i) Prior authorization of the Judge Advocate General in the case of review under Rule for Courts-Martial 1201(b); or

(ii) Prior authorization of the appellate court before which a case is pending review under Rules for Courts-Martial 1203 and 1204.

(C) In those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.

(D) The authorizing officials in paragraph (B)(ii) above may place conditions on authorized disclosures in order to minimize the disclosure.

(E) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to Rule for Courts-Martial 1112;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to Rule for Courts-Martial 1201(b);

(iii) Appellate government counsel;

(iv) Appellate defense counsel;

(v) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(vi) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(vii) The Justices of the United States Supreme Court and their professional staffs; and

(viii) Any other court of competent jurisdiction.''

(s) R.C.M. 1301(a) is amended by inserting the following after the second sentence:

''Summary courts-martial shall be conducted in accordance with the regulations of the military service to which the accused belongs.''

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

Mil. R. Evid. 317(b) is amended by replacing the word ''Transportation'' with the words ''Homeland Security.''

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 14c(2)(a) is amended by inserting the following new subparagraph (ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

''(ii) Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge.''

(b) Paragraph 16(c)(1)(a) is amended by replacing the word ''Transportation'' with the words ''Homeland Security''.

(c) Paragraph 35a is amended to read as follows:

''a. Text.

(a) Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (Article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the level prohibited under subsection (b), as shown by chemical analysis, shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable level of the alcohol concentration in a person's blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, the level is the blood alcohol concentration prohibited under the law of the State in which the conduct occurred, except as may be provided under paragraph (b)(2) for conduct on a military installation that is in more than one State, or the prohibited alcohol concentration level specified in paragraph (b)(3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the level is the blood alcohol concentration specified in paragraph (b)(3) or such lower level as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different levels for defining their prohibited blood alcohol concentrations under their respective State laws, the Secretary concerned for the installation may select one such level to apply uniformly on that installation.

(3) For purposes of paragraph (b)(1), the level of alcohol concentration prohibited in a person's blood is 0.10 grams or more of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis.''

(4) In this subsection, the term ''United States'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and the term ''State'' includes each of those jurisdictions.''

(d) Paragraph 35b(2)(c) is amended to read as follows:

''(c) the alcohol concentration level in the accused's blood or breath, as shown by chemical analysis, was equal to or exceeded the applicable level provided in paragraph 35a above.''

(e) Paragraph 35f is amended as follows:

''In that _____(personal jurisdiction data), did (at/on board—required), on or about 20___, (in the motor pool area) (near the Officer's Club) (at the intersection of ___ and ___) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) (___)] [an aircraft, to wit: (an AH–64 helicopter)(an F–14A fighter)(a KC–135 tanker) (___)] [a vessel, to wit: (the aircraft carrier USS ___) (the Coast Guard Cutter) (___)], [while drunk] [while impaired by ___] [while the alcohol concentration in his (blood)(breath) was, as shown by chemical analysis, equal to or exceeded (.10) (___) grams of alcohol per (100 milliliters of blood) (210 liters of breath), which is the limit under (cite applicable State law) (cite applicable statute or regulation)] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (by ordering that the aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure _____)].''

(f) Paragraph 97 is amended by (1) inserting the following new subparagraph (b)(2) and renumbering the existing subparagraphs (b)(2) and (b)(3) as (b)(3) and (b)(4); (2) adding the words ''and patronizing a prostitute'' after the word ''Prostitution'' in subparagraph (e)(1); and (3) inserting the following new subparagraph (f)(2) and renumbering the existing subparagraphs (f)(2) and (f)(3) as (f)(3) and (f)(4):

''(b)(2) *Patronizing a prostitute.*

(a) That the accused had sexual intercourse with another person not the accused's spouse;

(b) That the accused compelled, induced, enticed, or procured such person to engage in an act of sexual intercourse in exchange for money or other compensation; and

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.''

''(f)(2) *Patronizing a prostitute.*

In that ___ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ___20___, wrongfully (compel) (induce) (entice) (procure) ___ , a person not his/her spouse, to engage in (an act) (acts) of sexual intercourse with the accused in exchange for (money) (_____).''

(g) Paragraph 109 is amended to read as follows:

''109. ARTICLE 134—(Threat or hoax designed or intended to cause panic or public fear)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) *Threat.*

(a) That the accused communicated certain language;

(b) That the information communicated amounted to a threat;

(c) That the harm threatened was to be done by means of an explosive; weapon of mass destruction; biological or chemical agent, substance, or weapon; or hazardous material;

(d) That the communication was wrongful; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Hoax.*

(a) That the accused communicated or conveyed certain information;

(b) That the information communicated or conveyed concerned an attempt being made or to be made by means of an explosive; weapon of mass destruction; biological or chemical agent, substance, or weapon; or hazardous material, to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(c) That the information communicated or conveyed by the accused was false and that the accused then knew it to be false;

(d) That the communication of the information by the accused was malicious; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Threat.* A ''threat'' means an expressed present determination or intent to kill, injure, or intimidate a person or to damage or destroy certain property presently or in the future. Proof that the accused actually intended to kill, injure, intimidate, damage, or destroy is not required.

(2) *Explosive.* ''Explosive'' means gunpowder, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or grenade, fire bomb, or similar device, and any other explosive compound, mixture, or similar material.

(3) *Weapon of mass destruction.* A weapon of mass destruction means any device, explosive or otherwise, that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of: toxic or poisonous chemicals, or their precursors; a disease organism; or radiation or radioactivity.

(4) *Biological agent.* The term ''biological agent'' means 12 any micro-organism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or materials of any kind; or

(c) deleterious alteration of the environment.

(5) *Chemical agent, substance, or weapon.* A chemical agent, substance, or weapon refers to a toxic chemical and its precursors or a munition or device, specifically designed to cause death or other harm through toxic properties of those chemicals that would be released as a result of the employment of such munition or device, and any equipment specifically designed for use directly in connection with the employment of such munitions or devices.

(6) *Hazardous material.* A substance or material (including explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas, or mixture thereof) or a group or class of material designated as hazardous by the Secretary of Transportation.

(7) *Malicious.* A communication is ''malicious'' if the accused believed that the information would probably interfere with the peaceful use of the building, vehicle, aircraft, or other property concerned, or would cause fear or concern to one or more persons.

d. *Lesser included offenses.*

(1) *Threat*

(a) Article 134—communicating a threat

(b) Article 80—attempts

(c) Article 128—assault

(2) *Hoax.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeitures of all pay and allowances, and confinement for 10 years.

f. *Sample specifications.*

(1) *Threat.*

In that _____ (personal jurisdiction data) did, (at/on board—location) on or about _____20___, wrongfully communicate certain information, to wit: _____, which language constituted a threat to harm a person or property by means of a(n) [explosive; weapon of mass destruction; biological agent, substance, or weapon; chemical agent, substance, or weapon; and/or (a) hazardous material(s)].

(2) *Hoax.*

In that _____ (personal jurisdiction data) did, (at/on board—location), on or about _____20____, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully [(kill) (injure) (intimidate) _____] [(damage) (destroy) _____] by means of a(n) [explosive; weapon of mass destruction; biological agent, substance, or weapon; chemical agent, substance, or weapon; and/or (a) hazardous material(s)], to wit: ___, which information was false and which the accused then knew to be false.''

Sec. 4. Part V of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 1(h) is amended by redesignating existing paragraph 1(h) as 1(i) and inserting the following new paragraph 1(h):

''h. *Applicable standards.* Unless otherwise provided, the service regulations and procedures of the servicemember shall apply.''

(b) Paragraph 2(a) is amended by replacing the words ''Unless otherwise'' with the word ''As''.

(c) Paragraph 2(a) is amended by inserting the following after the second sentence:

''Commander includes a commander of a joint command.''

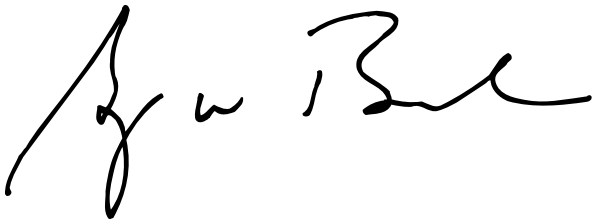
(d) Paragraph 2(a) is amended by inserting the words ''of a commander'' in the third sentence after the words ''the authority.''

Sec. 5. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial, or other action

may proceed in the same manner and with the same effect as if these amendments had not been prescribed.



THE WHITE HOUSE,

October 14, 2005.

Billing code 3195–01–P

Changes to the Discussion accompanying the Manual for Courts-Martial, United States

(a) The Discussion section of Part I (Preamble) is amended by replacing the word "Transportation" both times it appears with the words "Homeland Security".

(b) The Discussion section following R.C.M. 103(19), Definition for 10 U.S.C. 801(1), is amended by replacing the words "the General Counsel of the Department of Transportation." with the following: "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security. [NOTE: The Secretary of Homeland Security has designated the Chief Counsel, U.S. Coast Guard, to serve as the Judge Advocate General of the Coast Guard.]"

(c) The Discussion following R.C.M. 201(e)(7)(B) is amended by adding the following sentence to the beginning of the Discussion: "As to the authority to convene courts-martial, *see* R.C.M. 504."

(d) The Discussion accompanying R.C.M. 307(c)(4) is amended by striking the first sentence.

(e) The Discussion accompanying R.C.M. 601(e) is amended by replacing the sixth paragraph with the following:

"The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided that the convening authority has otherwise complied with the applicable notice requirements. If the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy."

(f) The Discussion following R.C.M. 907(b)(2)(B) is amended by inserting, in the first sentence, the word "either:" before the words "no limitation"; by inserting the words "; or child

Changes to Appendix 21, Analysis of Rules for Courts-Martial

(a) Appendix 21, Introduction, paragraph b (Supplementary Materials), is amended by replacing the word "Transportation" with the words "Homeland Security".

(b) The Analysis accompanying R.C.M. 103(2) is amended by inserting the following prior to the discussion of R.C.M. 103(3):

"*2005 Amendment*: The definition was amended to provide consistently with the contemporaneous amendment to R.C.M. 201(f)(1)(A)(iii)(b), which altered the default referral position for capital cases."

(c) The Analysis accompanying R.C.M. 201 is amended by inserting the following paragraph at the end thereof:

"*2005 Amendment*: Subsections (e)(2)(B) and (C) were revised to clarify that the reciprocal jurisdiction authority of joint commanders designated in either subsections (A), (B), or (C), is limited. This limitation is intended to preclude a joint commander from convening courts upon members who are not assigned or attached to a joint command."

(d) The Analysis accompanying R.C.M. 201(e)(3) is amended by inserting the following paragraph at the end thereof:

"*2005 Amendment*: This rule clarifies that when a service member is tried by a court-martial convened by a combatant or joint commander, the implementing regulations and procedures of the service to which the accused is a member shall apply."

(e) The Analysis accompanying R.C.M. 201(e)(4) is amended by inserting the following paragraph:

"*2005 Amendment*: Subsection (e)(4) was amended to clarify that members and counsel from different services may be detailed to a court-martial convened by a combatant or joint commander."

(f) The Analysis accompanying R.C.M. 201(f) is amended by inserting the following

the government in order to refer a court-martial as capital. It also provides a default construct that is applicable to the vast majority of actual capital eligible cases."

(g) The Analysis accompanying R.C.M. 307(c)(4) is amended by inserting the following prior to the discussion of subsection (c)(5):

"*2005 Amendment*: The first sentence of the non-binding discussion was moved to subsection (4) to reflect the decision of *United States v. Quiroz*, which identifies the prohibition against the unreasonable multiplication of charges as a "a long-standing principle" of military law. *See United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001)."

(h) The Analysis accompanying R.C.M. 503(b)(3) is amended by inserting the following paragraph:

"*2005 Amendment*: Subsection (b)(3) was amended to clarify that a military judge from any service may be detailed to a court-martial convened by a combatant or joint commander."

(i) The Analysis accompanying R.C.M. 503(c)(3) is amended by inserting the following:

"*2005 Amendment*: Subsection (c)(3) was amended to clarify that counsel from any service may be detailed to a court-martial convened by a combatant or joint commander."

(j) The Analysis accompanying R.C.M. 504(b)(2)(B) is amended by inserting the following paragraph:

"*2005 Amendment*: Subsection (b)(2)(B) was amended to clarify those authorized to determine when a unit is "separate or detached.""

(k) The Analysis accompanying R.C.M. 601(e) is amended by inserting the following paragraph:

"*2005 Amendment*: The Discussion section was amended to reflect the rule changes that require the convening authority to affirmatively refer a capital punishment eligible offense for trial as a capital case."

(l) The Analysis accompanying R.C.M. 907(b)(2) is amended by inserting the following

abuse cases in which the five-year statute of limitations was expired at the time the amendment to Article 43, UCMJ, became effective. *See generally Stogner v. California*, 539 U.S. 607, 609 (2003). All child abuse offenses committed prior to that date would be subject to the previous five-year statute of limitations that would expire on the day prior to the effective date of the amendment - November 24, 2003. The referenced case permits unexpired periods to be extended by the new statute, but does not allow the statute to renew an expired period."

(m) The Analysis accompanying R.C.M. 912(f)(4) is amended by inserting the following paragraph:

"*2005 Amendment*: This rule change is intended to conform military practice to federal practice and limit appellate litigation when the challenged panel member could have been peremptorily challenged or actually did not participate in the trial due to a peremptory challenge by either party. This amendment is consistent with the President's lawful authority to promulgate a rule that would result in placing before the accused the hard choice faced by defendants in federal district courts – to let the challenged juror sit on the case and challenge the ruling on appeal or to use a peremptory challenge to remove the juror and ensure an impartial jury. *See United States v. Miles*, 58 M.J. 192 (C.A.A.F. 2003); *United States v. Wiesen*, 56 M.J. 172 (C.A.A.F. 2001), *petition for reconsideration denied*, 57 M.J. 48 (C.A.A.F. 2002); *United States v. Armstrong*, 54 M.J. 51 (C.A.A.F. 2000)."

(n) The Analysis accompanying R.C.M. 1003(b)(2) is amended by inserting the following paragraph:

"*2005 Amendment*: Hardship Duty Pay (HDP) superceded Foreign Duty Pay (FDP) on 3 February 1999. HDP is payable to members entitled to basic pay. The Secretary of Defense has established that HDP will be paid to members (a) for performing specific missions, or (b) when assigned to designated areas."

(o) The Analysis accompanying R.C.M. 1004(b) is amended by replacing the first

(p) The following Analysis of new R.C.M. 1103A is inserted following the Analysis of R.C.M. 1103:

"Rule 1103A.

2005 Amendment: The 1998 Amendments to the Manual for Courts-Martial introduced the requirement to seal M.R.E. 412 (rape shield) motions, related papers, and the records of the hearings, to "fully protect an alleged victim of [sexual assault] against invasion of privacy and potential embarrassment." MCM Appendix 22, p. 36. As current Rule 412(c)(2) reads, it is unclear whether appellate courts are bound by orders sealing Rule 412 information issued by the military judge.

The effect and scope of a military judge's order to seal exhibits, proceedings, or materials is similarly unclear. Certain aspects of the military justice system, particularly during appellate review, seemingly mandate access to sealed materials. For example, appellate defense counsel have a need to examine an entire record of trial to advocate thoroughly and knowingly on behalf of a client. Yet there is some uncertainty about appellate defense counsel's authority to examine sealed materials in the absence of a court order. This authority applies to both military and civilian appellate defense counsel.

The rule is designed to respect the privacy and other interests that justified sealing the material in the first place, while at the same time recognizing the need for certain military justice functionaries to review that same information. The rule favors an approach relying on the integrity and professional responsibility of those functionaries, and assumes that they can review sealed materials and at the same time protect the interests that justified sealing the material in the first place. Should disclosure become necessary, then the party seeking disclosure is directed to an appropriate judicial or quasi-judicial official or tribunal to obtain a disclosure order."

(r) The Analysis accompanying R.C.M. 1301(a) is amended by inserting the following paragraph:

Changes to Appendix 22, Analysis of The Military Rules of Evidence

(a) The Introduction to Appendix 22 is amended by inserting the following at the end of the first sentence:

"(the Department under which the Coast Guard was operating at that time)."

(b) The Introduction to Appendix 22 is amended by replacing the word "Transportation" in the second paragraph with the words "Homeland Security."

(c) The Analysis to M.R.E. 317(b) is amended by replacing the word "Transportation" with the words "Homeland Security."

(d) The Analysis to M.R.E. 801(d)(1)(B) is amended to read as follows:

"Rule 801(d)(1)(B) makes admissible on the merits a statement consistent with the in-court testimony of the witness and "offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive." Unlike Rule 801(d)(1)(A), which addresses prior inconsistent statements given under oath, the earlier consistent statement need not have been made under oath or at any type of proceeding.

Rule 801(d)(1)(B) provides in pertinent part that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive. The court has interpreted the rule to require that a prior statement, admitted as substantive evidence, precede any motive to fabricate or improper influence that it is offered to rebut. *United States v. Allison*, 49 M.J. 54, 57 (C.A.A.F. 1998). Where multiple motives to fabricate or multiple improper influences are asserted, the statement need not precede all such motives or inferences, but only the one it is offered to rebut. *United States v. Faison*, 49 M.J. 59, 63 (C.A.A.F. 1998). This interpretation of the rule is consistent with the Supreme Court's decision in *Tome v. United States*, 513 U.S. 150, 159 (1995)."

The Rule strikes a balance between the general policy behind the Rules of Evidence of permitting admission of probative and reliable evidence and the congressional intent "that the residual hearsay exceptions will be used very rarely, and only in exceptional circumstances." S. Rep. No. 93-1277, *reprinted in* 1974 U.S.C.C.A.N. 7051, 7066. MRE 807 represents the acceptance of the so-called "catch-all" or "residual" exception to the hearsay rule. Because of the constitutional concerns associated with hearsay statements, the courts have created specific foundational requirements in order for residual hearsay to be admitted. *See United States v. Haner*, 49 M.J. 72, 77-78 (C.A.A.F. 1998). These requirements are: necessity, materiality, reliability, and notice.

The necessity prong "'essentially creates a 'best evidence' requirement.'" *United States v. Kelley*, 45 M.J. 275, 280 (C.A.A.F. 1996) (quoting *Larez v. City of Los Angeles*, 946 F.2d 630, 644 (9th Cir. 1991)). Coupled with the rule's materiality requirement, necessity represents an important fact that is more than marginal or inconsequential and is in furtherance of the interests of justice and the general purposes of the rules of evidence.

There are two alternative tests in order to fulfill the reliability condition. If the residual hearsay is a "non-testimonial statement," the proponent of the statement must demonstrate that the statement has particularized guarantees of trustworthiness as shown from the totality of the circumstances. *Idaho v. Wright*, 497 U.S. 805 (1990). The factors surrounding the taking of the statement and corroboration by other evidence should be examined to test the statement for trustworthiness. The Court of Appeals for the Armed Forces has held that the Supreme Court's prohibition against bolstering the indicia of reliability under a Sixth Amendment analysis does not apply to a residual hearsay analysis. Therefore, in addition to evidence of the circumstances surrounding the taking of the statement, extrinsic evidence can be considered. *United States v. McGrath*, 39 M.J. 158, 167 (C.M.A. 1994)." However, if the residual hearsay is a "testimonial statement," e.g. "affidavits, custodial examinations, prior testimony that the [accused] was

Changes to Appendix 23, Analysis of Punitive Articles

(a) Paragraph 14. The Analysis accompanying Punitive Article 90 is amended by inserting the following new subparagraph c(2)(a)(ii) and redesignating existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

"(ii) *2005 Amendment*: The Court of Appeals for the Armed Forces held that the lawfulness of an order is a question of law to be determined by the military judge, not the trier of fact. *See United States v. New*, 55 M.J. 95, 100-01 (C.A.A.F. 2001)."

(b) Paragraph 35. The Analysis accompanying Punitive Article 111 is amended by inserting the following new paragraph at the end of paragraph a:

"Additionally, this change defines the offense in terms of what alcohol concentration level is prohibited by operation of State law or as otherwise provided. Also, the text reflects an amendment to section 911 of title 10, United States Code, in section 552 of the National Defense Authorization Act for Fiscal Year 2004 to restore the blood alcohol concentration limit that defines the offense of drunken operation of a vehicle, aircraft, or vessel in the United States to the limit that existed before the passage of section 581 of the National Defense Authorization Act for Fiscal Year 2002. Before passage of that Act, an alcohol concentration level in the person's blood or breath of 0.10 grams "or more" of alcohol per 100 milliliters of blood (or 210 liters of breath) was a punishable offense. By relying on the term "blood alcohol content limit," as defined to be the maximum permissible concentration to operate a vehicle, aircraft, or vessel, section 581 resulted in eliminating the level of 0.10 grams as a prohibited level of alcohol concentration and raised the definition of the offense to some level in excess of 0.10 grams."

(c) Analysis for paragraph 97 is amended by adding the following:

"*2005 Amendment*: b. Elements. Subparagraph (2) defines the elements of the offense of patronizing a prostitute. Old subparagraphs (2) and (3) are now (3) and (4) respectively."

(d) Paragraph 109. The Analysis accompanying Punitive Article 134, subparagraph c, is

used in this amendment are based on the following U.S. Code provisions: 40 U.S.C. § 2302 (weapons of mass destruction); 22 U.S.C. § 6701 (chemical weapons); 50 U.S.C. § 1520a (biological agents); and 49 U.S.C. § 5301 (hazardous material)."

(e) Paragraph 109. The Analysis accompanying Punitive Article 134, subparagraph e, is amended by inserting the following at the end thereof:

"*2005 Amendment*: This amendment increases the maximum punishment currently permitted under paragraph 109 from five years to ten years. Ten years is the maximum period of confinement permitted under 18 U.S.C. § 844(e), the U.S. Code section upon which the original paragraph 109 is based."

Changes to Appendix 24, Analysis of Nonjudicial Punishment Procedure

(a) The Analysis section of Part V, Nonjudicial Punishment Procedure, paragraph 1(h), is amended by renaming it paragraph 1(i) and inserting the following as paragraph 1(h):

"*2005 Amendment*: Subsection (h) is new. This subsection was added to clarify that nonjudicial punishment proceedings conducted in a combatant or joint command are to be conducted in accordance with the implementing regulations and procedures of the service of which the accused is a member."

(b) The Analysis accompanying Part V, Nonjudicial Punishment Procedure, paragraph 2, is amended by inserting the following paragraph:

"*2005 Amendment*: Subsection (2) was amended to clarify the authority of the commander of a joint command to impose nonjudicial punishment upon service members of the joint command."

(c) The Analysis accompanying Part V, Nonjudicial Punishment Procedures, paragraph 7(e), is amended by replacing the word "Transportation" with the words "Homeland Security."

Changes to Other Appendices Accompanying the Manual for Courts-Martial

(a) Appendix 3.1, "Memorandum of Understanding Between the Departments of Justice and Transportation (Coast Guard) Relating to the Investigations and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction," is deleted.

(b) Appendix 12, "Maximum Punishment Chart" is amended as follows:

(1) Substituting "Prostitution and patronizing a prostitute" for "Prostitution."; and

(2) Substitute "Threat or hoax designed or intended to cause panic or public fear" for "Threat, bomb, or hoax," and substitute "10 yrs" for "5 yrs" in the Confinement column.

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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 "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/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.

S. 1413/P.L. 109–89

To redesignate the Crowne Plaza in Kingston, Jamaica as the Colin L. Powell Residential Plaza. (Oct. 13, 2005; 119 Stat. 2063)

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