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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–078–1]

Karnal Bunt; Addition and Removal of Regulated Areas in Arizona

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. We are adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We are also removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. These actions are necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

DATES: This interim rule is effective December 7, 2005. We will consider all comments that we receive on or before February 13, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0110 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–078–1, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.08, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–078–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Karnal Bunt Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–3769.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

The regulations in § 301.89–3(e) provide that we will classify a field or area as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the areas's proximity to a field found during survey to contain a bunted kernel; or
- A distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility.

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89–3 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

- Projections of the spread of Karnal bunt along the periphery of the infestation;
- The availability of natural habitats and host materials within the

noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

• The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

When we include noninfected acreage in a regulated area for one or more of the reasons previously listed, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as a buffer zone between fields or areas affected with Karnal bunt and areas outside of the regulated area.

Under the regulations in § 301.89–3(f), a field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

• The field is no longer being used for crop production; or

• Each year for a period of 5 consecutive [1] years, the field is subjected to any one of the following management practices (the practice used may vary from year to year): (1) Planted with a cultivated non-host crop, (2) tilled once annually, or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by adding 5,215 acres (36 fields) in Maricopa County, AZ, and 5,085 acres (approximately 15 to 20 fields) in Pinal County, AZ, to the list of regulated areas either because the fields within those areas were found during detection and delineating surveys to contain a bunted wheat kernel, or because the fields within those areas fall within the 3-mile-wide buffer zone around fields affected with Karnal bunt. This action is necessary in order to help prevent the spread of Karnal bunt into noninfected areas of the United States.

We are also removing 3,802 acres (37 fields) in Maricopa County, AZ, from the list of regulated areas based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). This action relieves restrictions on fields within those areas that are no longer warranted.

[1] On October 5, 2005, we published a proposed rule in the **Federal Register** (70 FR 58084–58086; Docket 04–134–1) in which we proposed to, among other things, amend the regulations to refer to 5 cumulative years rather than 5 consecutive years.

Immediate Action

Immediate action is necessary to help prevent Karnal bunt from spreading to noninfected areas of the United States. This rule will also relieve restrictions on certain fields or areas that are no longer warranted. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. We are adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We are also removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. These actions are necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

Deregulating certain areas or fields in Maricopa County, AZ, will benefit producers in these areas who wish to produce host crops in the future. Deregulation will allow producers to move wheat grain and seed with no restrictions. Prior to this rule, any wheat, durum wheat, or triticale grown in those areas or fields could be moved into or through a non-regulated area without restriction only if it first tested negative for bunted kernels. In addition, any wheat, durum wheat, or triticale grown in those fields could not be used as seed within or outside a regulated area unless it was tested and found free of bunted kernels and spores. Thus, deregulation allows for freer movement of grain and seed from those areas that are affected by this aspect of the interim rule.

The impact of this aspect of the rule on individual producers is not likely to be significant. The elimination of restrictions will increase marketing opportunities for producers, with impacts on prices those producers may set for their wheat, durum wheat, or triticale. Producers whose fields are deregulated may enjoy increased market opportunities for any wheat, durum wheat, or triticale they grow in the future (e.g. the availability of export markets). They may also receive a higher commodity price for their wheat, durum wheat, or triticale, although any price changes would most likely be small. This is due in part to the perceived notion that wheat produced in a regulated area is of lower quality. Deregulation may remove this stigma.

Despite the increased ability to move grain and seed, as well as a potential increase in the price received for wheat, the benefits to individual producers are not likely to be significant. There are several reasons for this. First, grain in regulated areas is tested for Karnal bunt at no charge to the producer. Thus, removing this testing requirement does not translate into a cost savings for producers, but merely eliminates an inconvenience. Second, little to no wheat seed will be grown in the affected areas of Maricopa County, AZ. In 2004, seed demand accounted for approximately 5 percent of total domestic wheat production. Given such a small percentage and the small size of the area in question relative to other wheat producing regions, it is not expected that this region will grow a significant amount of wheat for seed. Thus, the benefits associated with removing restrictions on the movement of seed are expected to be minimal in this area. Finally, in 2004, Maricopa County accounted for only 0.07 percent of total U.S. wheat production. Therefore, deregulation of these fields or areas would not influence the price of wheat to a significant degree if at all.

Regulation of certain areas in Maricopa and Pinal Counties, AZ, is also unlikely to have a profound effect on individual producers. In this case, producers will still be allowed to transport and market their grain in non-regulated areas if it tests negative for bunted kernels. As stated above, this cost is borne by the government and not by individual producers, so producers

are only affected by the inconvenience of testing. Further, little or no wheat seed is expected to be produced in these areas, so the restrictions on seed movement should be negligible. Finally, although producers may see a more limited market for their product and face lower prices, the influence of this wheat producing area is small. In 2004, the counties mentioned above together accounted for only 0.15 percent of total U.S. wheat production. Thus, any price changes would be very small.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. Those most likely affected by this interim rule are producers whose fields have been added to the list of regulated areas. Additionally, those farmers whose fields have been removed from the list of regulated areas and plan to grow wheat in the future will also be affected. The number of producers likely to be affected by this interim rule is not expected to be large. Also, it is not expected that the interim rule will have a significant impact on the affected producers. The reasons for this are presented in the preceding paragraphs.

Producers affected by the interim rule are likely to be small in size based on the U.S. Small Business Administration (SBA) standards for wheat farmers, with supporting data from the 2002 Census of Agriculture (2002 Census), which is the most recent census available. The SBA classifies wheat producers with total annual sales of not more than $750,000 as small entities. According to 2002 Census data, there were a total of 232 wheat-for-grain (all kind of wheat) farms in Arizona in 2002. Of those, 38 farms were in Maricopa County and 67 farms in Pinal County. Of this number, 91 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for wheat farms. Therefore, these findings, in conjunction with those above, demonstrate that although most of the entities impacted by the rule are expected to be small, the impact on those entities is not expected to be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.89–3, paragraph (g) is amended as follows:

■ a. Under the heading ''Arizona,'' in the entry for Maricopa County, by revising paragraphs (1), (3), and (4) to read as set forth below.

■ b. Under the heading ''Arizona,'' in the entry for Pinal County, by revising paragraph (2) to read as set forth below.

§ 301.89–3 Regulated areas.

* * * * *

(g) * * *

Arizona

* * * * *

Maricopa County. (1) Beginning at the southeast corner of sec. 17, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 14, T. 1 S., R.1 E.; then west to the southwest corner of sec. 9, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 9, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 5, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 5, T. 1S., R. 1 E.; then west to the northeast corner of sec. 6, T. 1 S., R. 1 W.; then south to the southeast corner of sec. 7, T. 1 S., R. 1 W.; then west to the northeast corner of sec. 14, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 14, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 20, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 20, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 29, T. 1 S., R. 3 W.; then south to the southeast corner of sec. 29, T. 1 S., R. 3 W.; then west to the southwest corner of sec. 26, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 7, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 5, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 5, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 28, T. 2 N., R. 2 W.; then east to the northeast corner of sec. 28, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 20, T. 3 N., R. 1 E.; then south to the northeast corner of sec. 29, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 27, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 27, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 35, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northeast corner of sec. 1, T. 1 N., R. 1 E.; then east to the northeast corner of sec. 4, T. 1 N., R. 2 E.; then south to the northwest corner of sec. 15, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 15, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 27, T. 1 N., R. 2 E.; then west to the southwest corner of sec. 27, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 33, T. 1 N., R. 2 E.; then west to the northeast corner of sec. 4, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 4, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 4, T. 1 S., R. 2 E.; then south to the point of beginning.

* * * * *

(3) Beginning at the southeast corner of sec. 30, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 33, T. 6 S., R. 6 W.; then south to the southeast corner of sec. 33, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 36,

T. 6 S., R. 7 W.; then north to the northwest corner of sec. 36, T. 6 S., R. 7 W.; then west to the southwest corner of sec. 26, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 23, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 18, T. 6 S., R. 7 W.; then north to the northeast corner of sec. 6, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 31, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 29, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 29, T. 5 S., R. 7 W.; then east to the southwest corner of sec. 22, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 22, T. 5 S., R 7 W.; then east to the southwest corner of sec. 14, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 13, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 24, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 30, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 30, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 32, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 32, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 5, T. 6 S., R. 5 W.; then south to the southeast corner of sec. 20, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 30, T. 6 S., R. 5 W.; then south to the point of beginning.

(4) Beginning at the southeast corner of sec. 36, T. 2 N., R. 5 E.; then west to the northeast corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 4, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 17, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 17, T. 1 N., R. 5 E.; then north to the northwest corner of sec. 17, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 12, T. 1 N., R. 4 E.; then east to the northeast corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 12, T. 2 N., R. 5 E.; then south to the point of beginning.

Pinal County:

* * * * *

(2) Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 1, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 14, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 14, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 3 E.; then west to the northeast corner of sec. 30, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 30, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 30, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 25, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 25, T. 6 S., R. 2 E.; then north to the southeast corner of sec. 11, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 11, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 20, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 24, T. 4 S., R. 3 E.; then south to the southeast corner of sec. 24, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 28, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 34, T. 4 S., R. 4 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 1, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 1, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 1, T. 5 S., R. 4 E.; then west to the northeast corner of sec. 12, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 24, T. 5 S., R. 4 E.; then west to the southwest corner of sec. 24, T. 5 S., R. 4 E.; then south to the northeast corner of sec. 35, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 35, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 37, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 50, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 49, T. 6 S., R. 4 E.; then west to the northeast corner of sec. 5, T. 6 S., R. 4 E.; then south to the point of beginning.

* * * * *

Done in Washington, DC, this 7th day of December 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23995 Filed 12–12–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA87

Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending regulations under the United States Grain Standards Act (USGSA) to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grains exported in containers. GIPSA is establishing this waiver to facilitate the marketing of high quality specialty grains exported in containers. This action is consistent with the objectives of the USGSA and will promote the continuing development of the high quality specialty export market. This waiver will be in effect for a maximum of 5 years, and if after this time period GIPSA determines that this waiver continues to advance the objectives of the USGSA, GIPSA will consider making this waiver permanent.

DATES: Effective January 12, 2006

FOR FURTHER INFORMATION CONTACT: John Sharpe, Director, Compliance Division, at his e-mail address: *John.R.Sharpe@usda.gov* or telephone him at (202) 720–8262.

SUPPLEMENTARY INFORMATION:

Background

The USGSA authorizes the Department to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired. Current waivers from the official inspection and Class X weighing requirements for export grain appear in section 7 CFR 800.18 of the regulations. These waivers are provided for grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade, exporters and individual elevator operators shipping less than 15,000 metric tons during the current and preceding calendar years, and when services are not available or in emergency situations.

This final rule provides a waiver for high quality specialty grains exported in containers.

The high quality specialty grain market has evolved in recent years as specialty grain shippers have catered to the specific needs of buyers around the world. Transactions involving high quality specialty grains are typically made between dedicated buyers and sellers who have ongoing business relationships and fully understand each other's specific needs and capabilities. Prototypically, sales are for small volumes of grain meeting strict commercial contract specifications for quality, production, handling, and packaging. The contractual specifications may require a single or limited number of seed varieties and may specify certain agronomic, harvesting, conditioning, or handling practices.

The quality management processes employed by participants of the high quality specialty grain market typically exceed those practiced in the commodity grain market where commingling and blending of different quality grains is an inherent part of the marketing process. As a result, the characteristics of these high quality specialty grains are differentiated from commodity grain.

Traditionally, shippers of high quality specialty grain exported in containers handled less than 15,000 metric tons of grain annually and thereby, were exempt from mandatory inspection and weighing requirements in accordance with Section 800.18(b) of the regulations under the USGSA. However, as the high quality specialty grain market has grown, volumes have begun to exceed the 15,000 metric ton waiver threshold requiring shippers to have their high quality specialty grains inspected and weighed in accordance with the USGSA. The cost of official inspection and weighing for these specialty operations is approximately $1.80 per metric ton compared to an average $0.34 per metric ton for bulk commodity exports. Furthermore, the contract quality specifications for high quality specialty grains typically exceed the grade limits for U.S. No. 1 grain. GIPSA is therefore waiving high quality specialty grains, as defined by GIPSA, exported in containers from the mandatory export inspection and weighing requirements.

Accordingly, this action will promote the marketing of high quality specialty grains and will not impair the objectives of the USGSA. Organizations exporting high quality specialty grain will continue to be required to notify GIPSA of their actions for registration purposes in accordance with the USGSA. Moreover, nothing in this exemption will prevent buyers and sellers from requesting and receiving official inspection and weighing services should they desire such services.

On April 28, 2005, GIPSA published an interim final rule with request for comments in the **Federal Register** (70 FR 21921) to amend the regulations under the USGSA to waive the mandatory inspection and weighing requirements for high quality specialty grains exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grains exported in containers and this action is consistent with the objectives of the USGSA. GIPSA believes that this waiver will promote the continuing development of the high quality specialty export market.

In the interim final rule, GIPSA defined high quality specialty grain as grain sold under contract terms that (1) specify quality better than the grade limits for U.S. No. 1 grain, or (2) specify ''organic'' as defined by the regulations 7 CFR part 205 under the Organic Foods Production Act of 1990, as amended.

To ensure that exporters of high quality specialty grains comply with this waiver, GIPSA is requiring exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes. GIPSA is not requiring exporters of high quality specialty grains to complete or submit new Federal government record(s), form(s), or report(s). GIPSA is requiring exporters to maintain, submit upon request, and make available documentation that fully and correctly disclose transactions concerning high quality specialty grain exported in containers. These records shall be maintained for a period of 3 years. This information collection requirement is essential to ensure that exporters who ship high quality specialty grain in containers comply with the waiver provisions.

The Paperwork Reduction Act requires the Agency to measure recordkeeping burden. Under this final rule, exporters must maintain records generated during the normal course of business. Experience has shown that the U.S. grain industry maintains grain contracts which specify quality parameters agreed to by buyers and sellers of grain. GIPSA believes that grain contracts would provide sufficient information to determine if exporters of high quality specialty grain are complying with the waiver.

This waiver will be in affect for a maximum of 5 years and if after this time period GIPSA determines that this waiver continues to advance the objectives of the USGSA, GIPSA will consider making this waiver permanent. GIPSA will monitor this waiver of official inspection and weighing requirements; however, if at any time, GIPSA determines that this waiver is not consistent with the objectives of the Act, GIPSA will remove this waiver.

Comment Review

GIPSA received comments from two separate commenters in response to its interim final rule published on April 28, 2005, in the **Federal Register** (70 FR 21921). An individual representing a high quality specialty grain company submitted two e-mail comments, and another comment was submitted on behalf of a grain trade association. The following paragraphs address comments received regarding the interim final rule.

1. Definition of High Quality Specialty Grains

The comments received questioned the meaning of the definition of high quality specialty grain as provided in the interim final rule. The grain trade association stated that the definition of high quality specialty grain is too narrow in that it provides only for organic grains and for grains with quality specifications higher than U.S. No. 1. Specifically, the commenter suggested that the definition of high quality specialty grains be ''revised to include grains with specific intrinsic characteristics that give value to customers beyond the official U.S. grain grading factors in U.S. No. 2 or 1 corn.''

GIPSA does not believe that it should expand the definition of high quality specialty grains to include specific intrinsic characteristics. GIPSA believes that the inclusion of such characteristics in the definition would allow a broader exemption from the mandatory inspection and weighing requirements than is consistent with the USGSA. Accordingly, GIPSA is not making any changes to the definition based on this comment.

The comment received from the high quality specialty grain company suggested that GIPSA clarify its definition of high quality specialty grain to define whether some factors or all factors must exceed the grade limits for U.S. No. 1 grain. The commenter also expressed concerns about the difficulty in procuring specialty soybeans with test weight that exceeds U.S. No. 1 because of environmental or varietal influences. After reviewing these issues, GIPSA believes that the definition should be clarified.

Virtually all high quality specialty grain is traded on contract specifications

that require all factors exceed the grade limits for U.S. No. 1 grain with the exception of test weight. GIPSA recognizes that test weight is a factor that is used throughout the market in making stowage calculations, as a measurement of stocks (volume) and production (yield), and as a general indicator of grain quality. However, other attributes in high quality specialty grain such as oil and protein content, etc. may provide a better indicator for end-use quality. Consequently, the definition merits clarification and is amended to read as follows: ''Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight * * *''

The commenter also asked why the example of post-harvest, pesticide-free corn would qualify for an exemption since 90 percent of corn harvested has no post-harvest chemicals applied. This comment has merit and, as a result, GIPSA will not use it in the future as an example of high quality specialty grain.

2. Phyto-Sanitary Certification

The comment from the grain trade association questioned why GIPSA's interim final rule did not address the requirement for phyto-sanitary certification for specialty grain exported in containers. The commenter recommended that GIPSA's interim final rule should permit approved private labs to perform phyto-sanitary certification to reduce cost. In brief, the USGSA does not provide GIPSA authority to regulate phyto-sanitary inspections and/or certification; consequently, GIPSA can not address this issue.

GIPSA will develop instructions to provide further guidance on requirements for high quality specialty grain exported in containers. GIPSA will also monitor exporters of high quality specialty grain in containers to ensure compliance with these waiver provisions.

GIPSA did not receive any comments regarding the information collection and recordkeeping requirements published in its interim final rule.

Executive Orders 12866 and 12988

This rule has been determined to be non-significant for the purpose of Executive Order 12866 by the Office of Management and Budget (OMB). This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Sec 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements included in this final rule has been approved by OMB under Control No. 0580–0022. GIPSA estimates that the time required for each exporter to maintain, submit upon request, and make available contractual information in a manner consistent with this rule is an average of 6-hours per year at $5.50 per hour for a total annual burden of $33.00 per exporter. Assuming that the estimated 80 exporters of high quality specialty grain in containers provide GIPSA this contractual information, the total annual burden is estimated to be $2,640.

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

Regulatory Flexibility Act Certification

GIPSA has determined that this final rule does not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). GIPSA has considered the economic impact of this final rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities because it eliminates burden. This final rule would effectively eliminate the cost impact on small businesses that would otherwise have to pay for onsite inspection and weighing services for specialty grain exported in containers.

The proliferation of high quality specialty grain exported in containers has caused shippers of high quality specialty grains to exceed the 15,000 metric ton waiver threshold for export inspection and weighing. GIPSA posed this situation to its Advisory Committee on November 16, 2004. GIPSA's Advisory Committee is composed of members representing producers, handlers, processors, and exporters. The Advisory Committee resolved that GIPSA should continue to enforce the mandatory export inspection and weighing requirements for commodity grains and establish a waiver for high quality specialty grains exported in containers. GIPSA believes that waiving high quality specialty grains exported in containers is consistent with the intent of the USGSA and will allow this market to continue to evolve.

Various methods were considered to address the challenges facing U.S. high quality specialty grain producers, marketers, processors, and handlers exporting via containers from global competition. GIPSA looked at requiring relaxed inspection and weighing requirements for these grains and decided that they would still place an undue burden on these types of shipments.

This final rule will allow exporters of high quality specialty grains shipped in containers to ship such grain without the burden of mandatory inspection and weighing, while allowing them to request the service when desired. Relieving this burden will allow the industry to grow and better compete in the global market.

This rule poses minimal additional cost to exporters. However, this rule eliminates the cost of the mandatory export inspection and weighing requirements for high quality specialty grain exported in containers. GIPSA estimates this cost to be at $1.80 per metric ton of grain exported and GIPSA believes that the benefits of this rule outweighs the cost.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain

■ For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL PROVISIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*).

■ 2. Section 800.0 is amended as follows:

■ a. Paragraphs (b)(44) through (106) are redesignated as (b)(45) through (107), respectively.

■ b. New paragraph (b)(44) is added to read as follows:

§ 800.0 Meaning of Terms.

* * * * *

(b) * * *

(44) High Quality Specialty Grain. Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the

factor test weight, or specify ''organic'' as defined by 7 CFR part 205. This definition expires July 31, 2010.

* * * * *

■ 3. Section 800.18 is amended by revising paragraph (b)(8) to read as follows:

§ 800.18 Waivers of the official inspection and Class X weighing requirements.

* * * * *

(b) * * *

(8) High Quality Specialty Grain Shipped in Containers. Official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. Records generated during the normal course of business that pertain to these shipments shall be made available to the Service upon request, for review or copying. These records shall be maintained for a period of 3 years. This waiver expires July 31, 2010.

* * * * *

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–23911 Filed 12–12–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM336; Special Conditions No. 25–309–SC]

Special Conditions: Sabreliner Model NA–265–60 Airplanes; High-Intensity Radiated Fields (HIRF).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sabreliner Model NA–265–60 airplanes modified by Flight Research, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of altimeter/air data display units manufactured by Innovative Solutions and Support, Inc. These display units perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 5, 2005. We must receive your comments by January 12, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM336, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM336. You can inspect comments in the Rules Docket weekdays, except Federal Holidays, between 7:30 a.m. and 4 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

On May 6, 2005, Flight Research, Inc., 1062 Flight Line, Hangar 161, Mojave, California 93501, applied for a Supplemental Type Certificate (STC) to modify Sabreliner Model NA–265–60 airplanes. These models are currently approved under Type Certificate No. A2WE. The Sabreliner Model NA–265–60 is a transport category airplane powered by two Pratt and Whitney Turbo Wasp JT12A–8 engines. The maximum takeoff weight is 20,172 pounds. These airplanes operate with a 2-person crew and can seat up to 10 passengers. The modification incorporates the installation of altimeter/air data display units manufactured by Innovative Solutions and Support, Inc. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Flight Research, Inc. must show that the Sabreliner Model NA–265–60, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Sabreliner Model NA–265–60 airplanes includes Civil Aeronautics Manual 4b, as amended by Amendment 4b–1 through Amendment 4b–9, Special Civil Air Regulation No. SR 422B Item 2, the Special Conditions set forth in Attachment ''A'' of FAA letter to NAA [North American Aviation] dated October 8, 1959, and FAA letter to NAA dated January 30, 1962.

If the Administrator finds that the applicable airworthiness regulations

(*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Sabreliner Model NA–265–60 airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sabreliner Model NA–265–60 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued under § 11.38 and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Flight Research, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the Sabreliner Model NA–265–60 airplanes modified by Flight Research, Inc. will incorporate altimeter/air data display units that will perform critical functions. These display units may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Sabreliner Model NA–265–60 airplanes modified by Flight Research, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to Sabreliner Model NA–265–60 airplanes modified by Flight Research, Inc. Should Flight Research, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Sabreliner Model NA–265–60 airplanes modified by Flight Research, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Sabreliner Model NA–265–60 airplanes modified by Flight Research, Inc.

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

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 5, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23935 Filed 12–12–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No NM309; Special Conditions No. 25–308–SC]

Special Conditions: Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 Series Airplanes; Flammability Reduction Means (Fuel Tank Inerting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. These airplanes, as modified by Boeing Commercial Airplanes, include a new flammability reduction means that uses a nitrogen generation system to reduce the oxygen content in the center wing fuel tank so that exposure to a combustible mixture of fuel and air is substantially minimized. This system is intended to reduce the average flammability exposure of the fleet of airplanes with the system installed to a level equivalent to 3 percent of the airplane operating time. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the design and installation of this system. These special conditions contain the additional safety standards the Administrator considers necessary to ensure an acceptable level of safety for the installation of the system and to define performance objectives the system must achieve to be considered an acceptable means for minimizing development of flammable vapors in the fuel tank installation.

DATES: The effective date of these special conditions is December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Propulsion and Mechanical Systems Branch, FAA, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320, e-mail *mike.dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Boeing Commercial Airplanes intends to modify the Model 737 series airplanes to incorporate a new flammability reduction means (FRM) that will inert the center fuel tanks with nitrogen-enriched air (NEA). Though the provisions of § 25.981, as amended by Amendment 25–102, will apply to this design change, these special conditions address novel design features. These special conditions are similar to those published in the **Federal Register** [Docket No. NM270; Special Conditions No. 25–285–SC] for incorporation of an FRM on Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes (70 FR 7800, January 24, 2005).

Regulations used as the standard for certification of transport category airplanes prior to Amendment 25–102, effective June 6, 2001, were intended to prevent fuel tank explosions by eliminating possible ignition sources from inside the fuel tanks. Service experience of airplanes certificated to the earlier standards shows that ignition source prevention alone has not been totally effective at preventing accidents. Commercial transport airplane fuel tank safety requirements have remained relatively unchanged throughout the evolution of piston-powered airplanes and later into the jet age. The fundamental premise for precluding fuel tank explosions has involved establishing that the design does not result in a condition that would cause an ignition source within the fuel tank ullage (the space in the tank occupied by fuel vapor and air). A basic assumption in this approach has been that the fuel tank could contain flammable vapors under a wide range of airplane operating conditions, even though there were periods of time in which the vapor space would not support combustion.

Fuel Properties

Jet fuel vapors are flammable in certain temperature and pressure ranges. The flammability temperature range of jet engine fuel vapors varies with the type and properties of the fuel, the ambient pressure in the tank, and the amount of dissolved oxygen released from the fuel into the tank. The amount of dissolved oxygen in a tank will also vary depending on the amount of vibration and sloshing of the fuel that occurs within the tank.

Jet A fuel is the most commonly used commercial jet fuel in the United States. Jet A–1 fuel is commonly used in other parts of the world. At sea level and with no sloshing or vibration present, these

fuels have flammability characteristics such that insufficient hydrocarbon molecules will be present in the fuel vapor-air mixture, to ignite when the temperature in the fuel tank is below approximately 100 °F. Too many hydrocarbon molecules will be present in the vapor to allow it to ignite when the fuel temperature is above approximately 175 °F. The temperature range where a flammable fuel vapor will form can vary with different batches of fuel, even for a specific fuel type. In between these temperatures the fuel vapor is flammable. This flammability temperature range decreases as the airplane gains altitude because of the corresponding decrease of internal tank air pressure. For example, at an altitude of 30,000 feet, the flammability temperature range is about 60 °F to 120 °F. Most transport category airplanes used in air carrier service are approved for operation at altitudes from sea level to 45,000 feet. Those airplanes operated in the United States and in most overseas locations use Jet A or Jet A–1 fuel, which typically limits exposure to operation in the flammability range to warmer days.

We have always assumed that airplanes would sometimes be operated with flammable fuel vapors in their fuel tank ullage (the space in the tank occupied by fuel vapor and air).

Fire Triangle

Three conditions must be present in a fuel tank to support combustion. These include the presence of a suitable amount of fuel vapor, the presence of sufficient oxygen, and the presence of an ignition source. This has been named the ''fire triangle.'' Each point of the triangle represents one of these conditions. Because of technological limitations in the past, the FAA philosophy regarding the prevention of fuel tank explosions to ensure airplane safety was to only preclude ignition sources within fuel tanks. This philosophy included application of fail-safe design requirements to fuel tank components (lightning design requirements, fuel tank wiring, fuel tank temperature limits, etc.) that are intended to preclude ignition sources from being present in fuel tanks even when component failures occur.

Need To Address Flammability

Three accidents have occurred in the last 13 years as the result of unknown ignition sources within the fuel tank in spite of past efforts, highlighting the difficulty in continuously preventing ignition from occurring within fuel tanks. Between 1996 and 2000 the National Transportation Safety Board (NTSB) issued recommendations to improve fuel tank safety that included prevention of ignition sources and addressing fuel tank flammability (i.e., the other two points of the fire triangle).

The FAA initiated safety reviews of all larger transport airplane type certificates to review the fail-safe features of previously approved designs and also initiated research into the feasibility of amending the regulations to address fuel tank flammability. Results from the safety reviews indicated a significant number of single and combinations of failures that can result in ignition sources within the fuel tanks. The FAA has adopted rulemaking to require design and/or maintenance actions to address these issues; however, past experience indicates unforeseen design and maintenance errors can result in development of ignition sources. These findings show minimizing or preventing the formation of flammable vapors by addressing the flammability points of the fire triangle will enhance fuel tank safety.

On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014), Fuel Tank Ignition Prevention Measures, that requested comments concerning the 1996 NTSB recommendations regarding reduced flammability. That notice provided significant discussion of the service history, background, and issues related to reducing flammability in transport airplane fuel tanks. Comments submitted to that notice indicated additional information was needed before the FAA could initiate rulemaking action to address all of the recommendations.

Past safety initiatives by the FAA and industry to reduce the likelihood of fuel tank explosions resulting from post crash ground fires have evaluated means to address other factors of the fire triangle. Previous attempts were made to develop commercially viable systems or features that would reduce or eliminate other aspects of the fire triangle (fuel or oxygen) such as fuel tank inerting or ullage space vapor ''scrubbing'' (ventilating the tank ullage with air to remove fuel vapor to prevent the accumulation of flammable concentrations of fuel vapor). Those initial attempts proved to be impractical for commercial transport airplanes due to the weight, complexity, and poor reliability of the systems, or undesirable secondary effects such as unacceptable atmospheric pollution.

Fuel Tank Harmonization Working Group

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG). The FAA tasked the FTHWG with providing a report to the FAA recommending regulatory text to address limiting fuel tank flammability in both new type certificates and the fleet of in service airplanes. The ARAC consists of interested parties, including the public, and provides a public process to advise the FAA concerning development of new regulations. [NOTE: The FAA formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity.]

The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report is in the docket created for this ARAC working group (Docket No. FAA–1998–4183). This docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at *http://dms.dot.gov.*

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, ''Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time (defined in this rule as flammability exposure evaluation time (FEET)), or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing.'' The report included a discussion of various options for showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred.

The level of flammability defined in the proposal was established based on a comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The ARAC concluded that the safety record of fuel tanks located in the wings with

a flammability exposure of 2 to 4 percent of the FEET was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. The thermal analyses documented in the report revealed that center wing fuel tanks that are heated by air conditioning equipment located beneath them contain flammable vapors, on a fleet average basis, in the range of 15 to 30 percent of the fleet operating time.

During the ARAC review, it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks and have significant surface areas that allow cooling of the fuel tank by outside air. These airplanes provide significantly reduced flammability exposure, near the 2 to 4 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that airplane operation with fuel tanks that were in the flammable range would be limited to nearly that of the wing fuel tanks. Findings from the ARAC report indicated that the primary method of compliance available at that time with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and to cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground-based inerting of fuel tanks, could be shown to be cost effective.

To address the ARAC recommendations, the FAA continued with research and development activity to determine the feasibility of requiring inerting for both new and existing designs.

FAA Rulemaking Activity

Based in part on the ARAC recommendations to limit fuel tank flammability exposure on new type designs, the FAA developed and published Amendment 25–102 in the **Federal Register** on May 7, 2001 (66 FR 23085). The amendment included changes to § 25.981 that require minimization of fuel tank flammability to address both reduction in the time fuel tanks contain flammable vapors, (§ 25.981(c)), and additional changes regarding prevention of ignition sources in fuel tanks. Section 25.981(c) was based on the FTHWG recommendation to achieve a safety level equivalent to that achieved by the fleet of transports with unheated aluminum wing tanks, between 2 to 4 percent flammability. The FAA stated in the preamble to Amendment 25–102 that the intent of the rule was to—

> * * * require that practical means, such as transferring heat from the fuel tank (*e.g.*, use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the rule is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to reduce flammability, for example cooling and ventilation means or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment.

Advisory circulars associated with Amendment 25–102 include AC 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines,'' and AC 25.981–2, ''Fuel Tank Flammability Minimization.'' Like all advisory material, these advisory circulars describe an acceptable means, but not the only means, for demonstrating compliance with the regulations.

FAA Research

In addition to the notice published in the **Federal Register** on April 3, 1997, the FAA initiated research to provide a better understanding of the ignition process of commercial aviation fuel vapors and to explore new concepts for reducing or eliminating the presence of flammable fuel air mixtures within fuel tanks.

Fuel Tank Inerting

In the public comments received in response to the 1997 notice, reference was made to hollow fiber membrane technology that had been developed and was in use in other applications, such as the medical community, to separate oxygen from nitrogen in air. Air is made up of about 78 percent nitrogen and 21 percent oxygen, and the hollow fiber membrane material uses the absorption difference between the nitrogen and oxygen molecules to separate the NEA from the oxygen. In airplane applications NEA is produced when pressurized air from an airplane source such as the engines is forced through the hollow fibers. The NEA is then directed, at appropriate nitrogen concentrations, into the ullage space of fuel tanks and displaces the normal fuel vapor/air mixture in the tank.

Use of the hollow fiber technology allowed nitrogen to be separated from air, which eliminated the need to carry and store the nitrogen in the airplane. Researchers were aware of the earlier system's shortcomings in the areas of weight, reliability, cost, and performance. Recent advances in the technology have resolved those concerns and eliminated the need for storing nitrogen on board the airplane.

Criteria for Inerting

Earlier fuel tank inerting designs produced for military applications were based on defining ''inert'' as a maximum oxygen concentration of 9 percent. This value was established by the military for protection of fuel tanks from battle damage. One major finding from the FAA's research and development efforts was the determination that the 9 percent maximum oxygen concentration level benchmark, established to protect military airplanes from high-energy ignition sources encountered in battle, was significantly lower than that needed to inert civilian transport airplane fuel tanks from ignition sources resulting from airplane system failures and malfunctions that have much lower energy. This FAA research established a maximum value of 12 percent as being adequate at sea level. The test results are currently available on FAA web site: *http://www.fire.tc.faa.gov/pdf/tn02–79.pdf* as FAA Technical Note ''Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures,'' report number DOT/FAA/AR–TN02/79. As a result of this research, the quantity of NEA that is needed to inert commercial airplane fuel tanks was lessened so that an effective FRM can now be smaller and less complex than was originally assumed. The 12 percent value is based on the limited energy sources associated with an electrical arc that could be generated by airplane system failures on typical transport airplanes and does not include events such as explosives or hostile fire.

As previously discussed, existing fuel tank system requirements (contained in earlier Civil Air Regulation (CAR) 4b and now in 14 Code of Federal Regulations (CFR) part 25) have focused solely on prevention of ignition sources. The FRM is intended to add an additional layer of safety by reducing the exposure to flammable vapors in the heated center wing tank, not necessarily eliminating them under all operating conditions. Consequently, ignition prevention measures will still be the

principal layer of defense in fuel system safety, now augmented by substantially reducing the time that flammable vapors are present in higher flammability tanks. We expect that by combining these two approaches, particularly for tanks with high flammability exposure, such as the heated center wing tank or tanks with limited cooling, risks for future fuel tank explosions can be substantially reduced.

Boeing Application for Certification of a Fuel Tank Inerting System

On September 23, 2005 (737 Classics) and December 2, 2005 (737 NG), Boeing Commercial Airplanes applied for a change to Type Certificate A16WE to modify Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes to incorporate a new FRM that inerts the center fuel tanks with NEA. These airplanes, approved under Type Certificate No. A16WE, are two-engine transport airplanes with a passenger capacity up to 189, depending on the submodel. These airplanes have an approximate maximum gross weight of 174,700 pounds with an operating range up to 3,380 miles.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate A16WE include 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–94, except for special conditions and exceptions noted in Type Certificate Data Sheet A16WE.

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. The FAA has determined that the FRM installation on the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes must also be shown to comply with § 25.981(a) and (b) at Amendment 25–102.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the acoustical change requirements of § 21.93(b).

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

Special conditions are initially applicable to the model for which they are issued. Should 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 or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Boeing has applied for approval of an FRM to minimize the development of flammable vapors in the center fuel tanks of Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. Boeing also plans to seek approval of this system on Boeing Model 757, 767, and 777 airplanes.

Boeing has proposed to voluntarily comply with § 25.981(c), Amendment 25–102, which is normally only applicable to new type designs or type design changes affecting fuel tank flammability. The provisions of § 21.101 require Boeing to also comply with §§ 25.981(a) and (b), Amendment 25–102, for the changed aspects of the airplane by showing that the FRM does not introduce any additional potential sources of ignition into the fuel tanks.

The FRM uses a nitrogen generation system (NGS) that comprises a bleed-air shutoff valve, ozone converter, heat exchanger, air conditioning pack air cooling flow shutoff valve, filter, air separation module, temperature regulating valve controller and sensor, high-flow descent control valve, float valve, and system ducting. The system is located in the air conditioning pack bay below the center wing fuel tank. Engine bleed air from the existing engine pneumatic bleed source flows through a control valve into an ozone converter and then through a heat exchanger, where it is cooled using outside cooling air. The cooled air flows through a filter into an air separation module (ASM) that generates NEA, which is supplied to the center fuel tank. Oxygen-enriched air (OEA) that is generated in this process is dumped overboard. The FRM also includes modifications to the fuel tank vent system to minimize dilution of the nitrogen-enriched ullage in the center tank due to cross-venting characteristics of the existing center wing fuel tank vent design.

Boeing has proposed that limited dispatch relief for operation with an inoperative NGS be allowed. Boeing has initially proposed a 10-day Master Minimum Equipment List (MMEL) relief for the system. Boeing has stated that to meet operator needs and system reliability and availability objectives, built-in test functions would be included and system status indication of some kind would be provided. In addition, indications would be provided in the cockpit on certain airplane models that have engine indicating and crew alerting systems. The reliability of the system is expected to be designed to achieve a mean time between failure (MTBF) of 5000 hours or better.

Discussion

The FAA policy for establishing the type design approval basis of the FRM design will result in application of §§ 25.981(a) and (b), Amendment 25–102, for the changes to the airplane that might increase the risk of ignition of fuel vapors. Boeing will therefore be required to substantiate that changes introduced by the FRM will meet the ignition prevention requirements of §§ 25.981(a) and (b), Amendment 25–102 and other applicable regulations.

With respect to compliance with § 25.981(c), AC 25.981–2 provides guidance in addressing minimization of fuel tank flammability within a heated fuel tank, but there are no specific regulations that address the design and installation of an FRM that inerts the fuel tank. These special conditions include additional requirements above that of Amendment 25–102 to § 25.981(c) to minimize fuel tank flammability, such that the level of minimization in these special conditions would prevent a fuel tank with an FRM from being flammable during specific warm day operating conditions, such as those present when recent accidents occurred.

Definition of ''Inert''

For the purpose of these special conditions, the tank is considered inert

when the oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude. The reference to each section of the tank is necessary because fuel tanks that are compartmentalized may encounter localized oxygen concentrations in one or more compartments that exceed the 12 percent value. Currently there is not adequate data available to establish whether exceeding the 12 percent limit in one compartment of a fuel tank could create a hazard. For example, ignition of vapors in one compartment could result in a flame front within the compartment that travels to adjacent compartments and results in an ignition source that exceeds the ignition energy (the minimum amount of energy required to ignite fuel vapors) values used to establish the 12 percent limit. Therefore, ignition in other compartments of the tank may be possible. Technical discussions with the applicant indicate the pressure rise in a fuel tank that was at or near the 12 percent oxygen concentration level would likely be well below the value that would rupture a typical transport airplane fuel tank. While this may be possible to show, it is not within the scope of these special conditions. Therefore, the effect of the definition of ''inert'' within these special conditions is that the average oxygen concentration of each individual compartment or bay of the tank must be evaluated and shown to meet the oxygen concentration limits specified in the definitions section of these special conditions (12 percent or less at sea level) to be considered inert.

Determining Flammability

The methodology for determining fuel tank flammability defined for use in these special conditions is based on that used by ARAC to compare the flammability of unheated aluminum wing fuel tanks to that of tanks that are heated by adjacent equipment. The ARAC evaluated the relative flammability of airplane fuel tanks using a statistical analysis commonly referred to as a ''Monte Carlo'' analysis that considered a number of factors affecting formation of flammable vapors in the fuel tanks. The Monte Carlo analysis calculates values for the parameter of interest by randomly selecting values for each of the uncertain variables from distribution tables. This calculation is conducted over and over to simulate a process where the variables are randomly selected from defined distributions for each of the variables. The results of changing these variables for a large number of flights can then be used to approximate the results of the real world exposure of a large fleet of airplanes.

Factors that are considered in the Monte Carlo analysis required by these special conditions include those affecting all airplane models in the transport airplane fleet such as: a statistical distribution of ground, overnight, and cruise air temperatures likely to be experienced worldwide, a statistical distribution of likely fuel types, and properties of those fuels, and a definition of the conditions when the tank in question will be considered flammable. The analysis also includes factors affecting specific airplane models such as climb and descent profiles, fuel management, heat transfer characteristics of the fuel tanks, statistical distribution of flight lengths (mission durations) expected for the airplane model worldwide, etc. To quantify the fleet exposure, the Monte Carlo analysis approach is applied to a statistically significant number (1,000,000) of flights where each of the factors described above is randomly selected. The flights are then selected to be representative of the fleet using the defined distributions of the factors described previously. For example, flight one may be a short mission on a cold day with an average flash point fuel, and flight two may be a long mission on an average day with a low flash point fuel, and on and on until 1,000,000 flights have been defined in this manner. For every one of the 1,000,000 flights, the time that the fuel temperature is above the flash point of the fuel, and the tank is not inert, is calculated and used to establish if the fuel tank is flammable. Averaging the results for all 1,000,000 flights provides an average percentage of the flight time that any particular flight is considered to be flammable. While these special conditions do not require that the analysis be conducted for 1,000,000 flights, the accuracy of the Monte Carlo analysis improves as the number of flights increases. Therefore, to account for this improved accuracy, Appendix 2 of these special conditions defines lower flammability limits if the applicant chooses to use fewer than 1,000,000 flights.

The determination of whether the fuel tank is flammable is based on the temperature of the fuel in the tank determined from the tank thermal model, the atmospheric pressure in the fuel tank, and properties of the fuel quantity loaded for a given flight, which is randomly selected from a database consisting of worldwide data. The criteria in the model are based on the assumption that as these variables change, the concentration of vapors in the tank instantaneously stabilizes and that the fuel tank is at a uniform temperature. This model does not include consideration of the time lag for the vapor concentration to reach equilibrium, the condensation of fuel vapors from differences in temperature that occur in the fuel tanks, or the effect of mass loading (times when the fuel tank is at the unusable fuel level and there is insufficient fuel at a given temperature to form flammable vapors). However, fresh air drawn into an otherwise inert tank during descent does not immediately saturate with fuel vapors so localized concentrations above the inert level during descent do not represent a hazardous condition. These special conditions allow the time during descent, where a localized amount of fresh air may enter a fuel tank, to be excluded from the determination of fuel tank flammability exposure.

Definition of Transport Effects

The effects of low fuel conditions (mass loading) and the effects of fuel vaporization and condensation with time and temperature changes, referred to as ''transport effects'' in these special conditions, are excluded from consideration in the Monte Carlo model used for demonstrating compliance with these special conditions. These effects have been excluded because they were not considered in the original ARAC analysis, which was based on a relative measure of flammability. For example, the 3 percent flammability value established by the ARAC as the benchmark for fuel tank safety for wing fuel tanks did not include the effects of cooling of the wing tank surfaces and the associated condensation of vapors from the tank ullage. If this effect had been included in the wing tank flammability calculation, it would have resulted in a significantly lower wing tank flammability benchmark value. The ARAC analysis also did not consider the effects of mass loading which would significantly lower the calculated flammability value for fuel tanks that are routinely emptied (e.g., center wing tanks). The FAA and European Aviation Safety Agency (EASA) have determined that using the ARAC methodology provides a suitable basis for determining the adequacy of an FRM system.

The effect of condensation and vaporization in reducing the flammability exposure of wing tanks is comparable to the effect of the low fuel condition in reducing the flammability exposure of center tanks. We therefore

consider these effects to be offsetting, so that by eliminating their consideration, the analysis will produce results for both types of tanks that are comparable. Using this approach, it is possible to follow the ARAC recommendation of using the unheated aluminum wing tank as the standard for evaluating the flammability exposure of all other tanks. For this reason, both factors have been excluded when establishing the flammability exposure limits. During development of these harmonized special conditions, the FAA and EASA agreed that using the ARAC methodology provides a suitable basis for determining the flammability of a fuel tank and consideration of transport effects should not be permitted.

Flammability Limit

The FAA, in conjunction with EASA and Transport Canada, has developed criteria within these special conditions that require overall fuel tank flammability to be limited to 3 percent of the fleet average operating time. This overall average flammability limit consists of times when the system performance cannot maintain an inert tank ullage, primarily during descent when the change in ambient pressures draws air into the fuel tanks, and those times when the FRM is inoperative due to failures of the system and the airplane is dispatched with the system inoperative.

Specific Risk Flammability Limit

These special conditions also include a requirement to limit fuel tank flammability to 3 percent during ground operations, and climb phases of flight to address the specific risk associated with operation during warmer day conditions when accidents have occurred. The specific risk requirement is intended to establish minimum system performance levels and therefore the 3 percent flammability limit excludes reliability related contributions, which are addressed in the average flammability assessment. The specific risk requirement may be met by conducting a separate Monte Carlo analysis for each of the specific phases of flight during warmer day conditions defined in these special conditions, without including the times when the FRM is not available because of failures of the system or dispatch with the FRM inoperative.

Inerting System Indications

Fleet average flammability exposure involves several elements, including—

- The time the FRM is working properly and inerts the tank or when the tank is not flammable;
- The time when the FRM is working properly but fails to inert the tank or part of the tank, because of mission variation or other effects;
- The time the FRM is not functioning properly and the operator is unaware of the failure; and
- The time the FRM is not functioning properly and the operator is aware of the failure and is operating the airplane for a limited time under MEL relief.

The applicant may propose that MMEL relief is provided for aircraft operation with the FRM unavailable; however, since the intent of § 25.981(c)(1) is to minimize flammability, the FRM system should be operational to the maximum extent practical. Therefore, these special conditions include reliability and reporting requirements to enhance system reliability so that dispatch of airplanes with the FRM inoperative would be very infrequent. Cockpit indication of the system function that is accessible to the flightcrew is not an explicit requirement, but may be required if the results of the Monte Carlo analysis show the system cannot otherwise meet the flammability and reliability requirements defined in these special conditions. Flight test demonstration and analysis will be required to demonstrate that the performance of the inerting system is effective in inerting the tank during those portions of ground and the flight operations where inerting is needed to meet the flammability requirements of these special conditions.

Various means may be used to ensure system reliability and performance. These may include system integrity monitoring and indication, redundancy of components, and maintenance actions. A combination of maintenance indication and/or maintenance check procedures will be required to limit exposure to latent failures within the system, or high inherent reliability is needed to assure the system will meet the fuel tank flammability requirements. The applicant's inerting system does not incorporate redundant features and includes a number of components essential for proper system operation. Past experience has shown inherent reliability of this type of system would be difficult to achieve. Therefore, if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks at appropriate intervals determined by the reliability analysis will be required for these features. Validation of proper function of essential features of the system would likely be required once per day by maintenance review of indications, reading of stored maintenance messages or functional checks (possibly prior to the first flight of the day) to meet the reliability levels defined in these special conditions. The determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification.

Any features or maintenance actions needed to achieve the minimum reliability of the FRM will result in fuel system airworthiness limitations similar to those defined in § 25.981(b). Boeing will be required to include in the instructions for continued airworthiness (ICA) the replacement times, inspection intervals, inspection procedures, and the fuel system limitations required by § 25.981(b). Overall system performance and reliability must achieve a fleet average flammability that meets the requirements of these special conditions. If the system reliability falls to a point where the fleet average flammability exposure exceeds these requirements, Boeing will be required to define appropriate corrective actions, to be approved by the FAA, that will bring the exposure back down to the acceptable level.

Boeing proposed that the FRM be eligible for a 10-day MMEL dispatch interval. The Flight Operations Evaluation Board (FOEB) will establish the approved interval based on data the applicant submits to the FAA. The MMEL dispatch interval is one of the factors affecting system reliability analyses that must be considered early in the design of the FRM, prior to FAA approval of the MMEL. Boeing requested that the authorities agree to use of an MMEL inoperative dispatch interval for design of the system. Boeing data indicate that certain systems on the airplane are routinely repaired prior to the maximum allowable interval. These special conditions require that Boeing use an MMEL inoperative dispatch interval of 60 hours in the analysis as representative of the mean time for which an inoperative condition may occur for the 10-day MMEL maximum interval requested. Boeing must also include actual dispatch inoperative interval data in the quarterly reports required by Special Condition III(c)(2). Boeing may request to use an alternative interval in the reliability analysis. Use of a value less than 60 hours would be a factor considered by the FOEB in establishing the maximum MMEL dispatch limit. The reporting requirement will provide data necessary to validate that the reliability of the

FRM achieved in service meets the levels used in the analysis.

Appropriate maintenance and operational limitations with the FRM inoperative may also be required and noted in the MMEL. The MMEL limitations and any operational procedures should be established based on results of the Monte Carlo analysis, including the results associated with operations in warmer climates where the fuel tanks are flammable a significant portion of the FEET when not inert. While the system reliability analysis may show that it is possible to achieve an overall average fleet exposure equal to or less than that of a typical unheated aluminum wing tank, even with an MMEL allowing very long inoperative intervals, the intent of the rule is to minimize flammability. Therefore, the shortest practical MMEL relief interval should be proposed. To ensure limited airplane operation with the system inoperative and to meet the reliability requirements of these special conditions, appropriate level messages that are needed to comply with any dispatch limitations of the MMEL must be provided.

Confined Space Hazard Markings

Introduction of the FRM will result in NEA within the center wing fuel tank and the possibility of NEA in compartments adjacent to the fuel tank if leakage from the tank or NEA supply lines were to occur. Lack of oxygen in these areas could be hazardous to maintenance personnel, the passengers, or flightcrew. Existing certification requirements do not address all aspects of these hazards. Paragraph II(f) of these special conditions requires the applicant to provide markings to emphasize the potential hazards associated with confined spaces and areas where a hazardous atmosphere could be present due to the addition of an FRM.

For the purposes of these special conditions, a confined space is an enclosed or partially enclosed area that is big enough for a worker to enter and perform assigned work and has limited or restricted means for entry or exit. It is not designed for someone to work in regularly, but workers may need to enter the confined space for tasks such as inspection, cleaning, maintenance, and repair. (Reference U.S. Department of Labor Occupational Safety & Health Administration (OSHA), 29 CFR 1910.146(b).) The requirement in these special conditions does not significantly change the procedures maintenance personnel use to enter fuel tanks and are not intended to conflict with existing government agency requirements (e.g., OSHA). Fuel tanks are classified as confined spaces and contain high concentrations of fuel vapors that must be exhausted from the fuel tank before entry. Other precautions such as measurement of the oxygen concentrations before entering a fuel tank are already required. Addition of the FRM that utilizes inerting may result in reduced oxygen concentrations due to leakage of the system in locations in the airplane where service personnel would not expect it. A worker is considered to have entered a confined space just by putting his or her head across the plane of the opening. If the confined space contains high concentrations of inert gases, workers who are simply working near the opening may be at risk. Any hazards associated with working in adjacent spaces near the opening should be identified in the marking of the opening to the confined space. A large percentage of the work involved in properly inspecting and modifying airplane fuel tanks and their associated systems must be done in the interior of the tanks. Performing the necessary tasks requires inspection and maintenance personnel to physically enter the tank, where many environmental hazards exist. These potential hazards that exist in any fuel tank, regardless of whether nitrogen inerting has been installed, include fire and explosion, toxic and irritating chemicals, oxygen deficiency, and the confined nature of the fuel tank itself. In order to prevent related injuries, operator and repair station maintenance organizations have developed specific procedures for identifying, controlling, or eliminating the hazards associated with fuel-tank entry. In addition government agencies have adopted safety requirements for use when entering fuel tanks and other confined spaces. These same procedures would be applied to the reduced oxygen environment likely to be present in an inerted fuel tank.

The designs currently under consideration locate the FRM in the fairing below the center wing fuel tank. Access to these areas is obtained by opening doors or removing panels which could allow some ventilation of the spaces adjacent to the FRM. But this may not be enough to avoid creating a hazard. Therefore, we intend that marking be provided to warn service personnel of possible hazards associated with the reduced oxygen concentrations in the areas adjacent to the FRM.

Appropriate markings would be required for all inerted fuel tanks, tanks adjacent to inerted fuel tanks and all fuel tanks communicating with the inerted tanks via plumbing. The plumbing includes, but is not limited to, plumbing for the vent system, fuel feed system, refuel system, transfer system and cross-feed system. NEA could enter adjacent fuel tanks via structural leaks. It could also enter other fuel tanks through plumbing if valves are operated or fail in the open position. The markings should also be stenciled on the external upper and lower surfaces of the inerted tank adjacent to any openings to ensure maintenance personnel understand the possible contents of the fuel tank. Advisory Circular 25.981–2 provides additional guidance regarding markings and placards.

Effect of FRM on Auxiliary Fuel Tank System Supplemental Type Certificates

Boeing plans to offer a service bulletin that will describe installation of the FRM on existing in-service airplanes. Some in-service airplanes have auxiliary fuel tank systems installed that interface with the center wing tank. The Boeing FRM design is intended to provide inerting of the center wing fuel tank volume of the 737 and does not include consideration of the auxiliary tank installations. Installation of the FRM on existing airplanes with auxiliary fuel tank systems may therefore require additional modifications to the auxiliary fuel tank system to prevent development of a condition that may cause the tank to exceed the 12 percent oxygen limit. The FAA will address these issues during development and approval of the service bulletin for the FRM.

Disposal of Oxygen-Enriched Air (OEA)

The FRM produces both NEA and OEA. The OEA generated by the FRM could result in an increased fire hazard if not disposed of properly. The OEA produced by the ASM is ducted and dumped overboard. Special requirements are included in these special conditions to address potential leakage of OEA due to failures and safe disposal of the OEA during normal operation.

To ensure that an acceptable level of safety is achieved for the modified airplanes using a system that inerts heated fuel tanks with NEA, these special conditions (per § 21.16) are needed to address the unusual design features of an FRM. 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.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–05–06–SC for the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes was published in the **Federal Register** on June 15, 2005 (70 FR 34702). Five commenters responded to the notice.

General Comments

Comment: The commenter disagrees with the premise in the proposed special conditions that wing fuel tanks offer an acceptable minimum level of flammability exposure and is therefore concerned about using this minimum level for development of inerting systems. The commenter believes that the flammability exposure in the fuel tanks should be reduced to the lowest level technically feasible.

FAA Reply: We do not concur. These special conditions address fuel tank flammability for Boeing Model 737 airplanes currently in service. Although technical advancements have made it practical to incorporate FRM into existing airplanes, it is not practical at this time to reduce fuel tank flammability exposure below the levels identified in these special conditions because airplane systems needed to support the current technology that utilizes inerting were not sized to provide an optimized pressurized air source. Compliance with the average fuel tank flammability requirement and the warm day requirement in these special conditions results in a significant reduction in fuel tank flammability, to a level below that of an unheated aluminum wing fuel tank, and improved airplane safety. No changes were made as a result of this comment.

Comment: The commenter requests that the long-term goal for the definition of ''inert'' at sea level be established as 9 percent oxygen concentration. The commenter believes that the 12 percent value used in the definition of ''inert'' in the proposed special conditions, should be considered as a ''level of reduced flammability.'' The commenter states that past research conducted to support development of military aircraft inerting systems has shown that fuel vapors are combustible at 12 percent oxygen concentration. These military systems, designed to protect against high-energy (intentional) ignition threats, have established 9 percent as an acceptable oxygen concentration to prevent ignition.

FAA Reply: We do not concur. The special condition requirement of 12 percent maximum oxygen concentration at sea level is based on FAA fuel vapor ignition testing at various oxygen contents and review of other test data, such as Navy live gunfire tests using 30 mm incendiary ammunition. These data are provided in Naval Weapons Center document NWC TP 7129, ''The Effectiveness of Ullage Nitrogen-Inerting Systems Against 30 mm High-Explosive Incendiary Projectiles,'' dated May 1991, that is available in the docket file for these special conditions. These data show that 12 percent oxygen concentration will prevent a fuel tank explosion for airplane system failure and malfunction-generated ignition sources. No changes were made as a result of this comment.

Novel or Unusual Design Features

Comment: The commenter requests that the sentence ''The OEA from the ASM is mixed with cooling air from the heat exchanger to dilute the oxygen concentration and then exhausted overboard'' be deleted. The commenter states this does not apply to the 737 FRM design.

FAA Reply: We concur in part with the commenter. We have removed this sentence from the second to the last paragraph under this section in the final special conditions but have modified the previous sentence to state ''The cooled air flows through a filter into an air separation module (ASM) that generates NEA, which is supplied to the center fuel tank. Oxygen-enriched air (OEA) which is generated in this process is dumped overboard.'' We have also modified the sentence regarding how OEA will be disposed, under the Disposal of Oxygen-Enriched Air (OEA) section, to state ''The OEA produced by the ASM is ducted and dumped overboard'' to be consistent with how the system has been designed.

Inerting System Indications

Comment: The commenter requests that alternative options to daily maintenance checks of the FRM system be provided in the instructions for continued airworthiness for operators that would have difficulty in meeting a daily maintenance requirement. The commenter states that a daily maintenance check of the FRM system does not fit into their current maintenance programs and would be a burden to their operation. The preamble to the proposed special conditions states that ''if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks will be required for these features.''

FAA Reply: We recognize the concern stated by the commenter and provide clarification of the intent of these special conditions. We agree that daily maintenance checks could be burdensome to operators of the affected airplanes. The preamble discussion was not intended to mandate daily checks by maintenance personnel. However, in order to comply with the special conditions, the applicant must demonstrate that the FRM meets specific performance and reliability requirements. Various design methods to ensure the reliability and performance is provided may include a combination of system integrity monitoring and indication, redundancy of components, and maintenance actions. The need for system functional checks and the interval between the checks will be established based on the level of ''system maintenance indication provided for features of the system essential for proper system operation'' and the reliability of the system. If continual system monitoring is provided or features of the system have high inherent reliability, daily checks would not be needed to meet the reliability requirements in these special conditions. As we stated in the preamble, the determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification. The time interval between system health checks and maintenance will be established by the reliability analysis, any airworthiness limitations, and the FOEB. No changes were made as a result of this comment.

Comment: The commenter states that these special conditions propose that the MMEL permit operation with an inoperative flammability reduction system (FRS) for up to 10 days/60 flight hours. The commenter agrees that the system should be operational to the maximum extent practical and therefore, as stated in the preamble, ''the shortest practical MMEL relief interval should be proposed.'' The commenter believes that 10 days is an excessive MMEL relief interval for the FRS and states that a 3-day interval, such as adopted for other inoperative safety systems such as flight data recorders, would be a more appropriate interval.

FAA Reply: We do not concur with the commenter regarding setting a specific MMEL interval in the special conditions. The applicant has proposed a 10-day MMEL relief period, but the FOEB will determine and approve the appropriate MMEL intervals based on data the applicant submits to the FAA. The applicant must show that the fleet average flammability exposure of a tank with an FRM installed is equal to or less than 3 percent, including any time

when the system is inoperative. Setting a prescriptive limit on the MMEL interval such as 3 days would not allow the designer to use the more objective performance based criteria that are currently in these special conditions. No changes were made as a result of this comment.

Special Conditions

I. Definitions

Comment: The commenter requests ''bulk average'' be removed from the definition of inert. The commenter requests this change in order that the FAA and EASA FRM special conditions for the Boeing 737 series airplanes remain harmonized.

FAA Reply: We concur with the commenter. We have modified the definition to read as follows:

Inert. For the purpose of these special conditions, the tank is considered inert when the oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude.

II. System Performance and Reliability

Comment: The commenter would like to know why the takeoff phase of flight was not included in the warm day requirements in paragraphs II(b) and II(b)(2). The commenter states the 747 FRM Special Conditions 25–285–SC included this phase.

FAA Reply: Although the takeoff phase of flight is not specifically called out in these special conditions, it remains one portion of the flight that must be included in the warm day requirements. We changed paragraph II(b)(2) to define the climb portion of the flight to include the short time interval of takeoff. The ground phase of operation is differentiated from the climb phase (that includes takeoff) by aircraft rotation. This was done to simplify the flammability analysis by eliminating the need to conduct a separate warm day flammability analysis for the takeoff phase of flight. No changes were made as a result of this comment.

III. Maintenance

Comment: The commenter requests that the requirements in paragraphs III(a) and III(b) of the FAA 737 FRM Special Conditions be revised to align with the following maintenance requirement in the EASA 747 FRM Special Condition RP747–E–01 (the maintenance requirement proposed for the EASA 737 FRM Special Conditions is identical):

The FRS [flammability reduction system] shall be subject to analysis using conventional processes and methodology to ensure that the minimum scheduled maintenance tasks required for securing the continuing airworthiness of the system and installation are identified and published as part of the CS 25.1529 compliance. Maintenance tasks arising from either the Monte Carlo analysis or a CS 25.1309 safety assessment shall be dealt with in accordance with the principles laid down in FAA AC 25.19. The applicant shall prepare a validation program for the associated continuing airworthiness maintenance tasks, fault finding procedures, and maintenance procedures.

The commenter agrees that conventional procedures should be used to identify necessary maintenance tasks. The FAA wording implies that limitations must be identified for all maintenance tasks, whereas detailed development of the Model 747 FRM maintenance procedures has identified that this is not appropriate for some tasks (i.e., the daily inspection of status messages on the Engine Indication and Crew Alerting System (EICAS)). Airworthiness limitations in the form of maintenance tasks, inspections, or Critical Design Configuration Control Limitations (CDCCL) were defined by SFAR 88 to address unsafe conditions resulting from ignition source risks. The proposed FRM is intended as an additional layer of safety above ignition source prevention measures. The FRM will be allowed to be inoperative and on the Minimum Equipment List (MEL). Therefore, no feature of the FRM affects the airworthiness of the airplane.

FAA Reply: We agree in part regarding the comment that Airworthiness Limitations, in the form of maintenance tasks, inspections, or CDCCLs were defined by SFAR 88 to address unsafe conditions resulting from ignition source risks and that the FRM is seen as an additional layer of protection to the ignition source prevention measures. However, the performance and reliability of the FRM, are critical to providing that additional layer of safety for the center wing tank and as such, there must be limitations established to ensure that maintenance actions and installations of auxiliary fuel tanks do not increase the overall fleet average flammability exposures above that permitted by these special conditions. Airworthiness Limitations for the FRM system are only required for:

(1) those FRM components that, if failed, would affect the performance and/or reliability of the FRM system as dictated by the requirements in paragraphs II(a) and (b); and

(2) any critical features of a fuel tank system needed in order to prevent an auxiliary fuel tank installation from increasing the flammability exposure in the center wing fuel tank above that required under paragraphs II(a)(1), II(a)(2), and II(b) or degrading the performance or reliability of the FRM.

No changes have been made as a result of this comment.

Comment: This commenter requests that the FAA revise paragraphs III(c) and III(c)(1) in the final 737 FRM Special Conditions to align with the EASA 747 FRM Special Condition RP747–E–01 requirement for In-Service monitoring which states ''Following introduction to service the applicant must introduce an event monitoring program, accruing data from a reasonably representative sample of global operations, to ensure that the implications of component failures affecting the FRS are adequately assessed on an on-going basis.'' The In-service monitoring requirement proposed for the EASA 737 FRM Special Condition is the same. The commenter states that the sampling approach in the EASA requirement will be sufficient to verify whether the FRM is operating within the expected failure rates, or if changes are necessary to improve reliability. Requirements harmonized with EASA will facilitate consistent requirements for all manufacturers and operators.

FAA Reply: We do not concur with changing the special conditions. The reporting requirements defined in these special conditions allow the design approval holder (DAH) the latitude to develop a reporting system for approval by the authorities based on data obtained through business agreements with certain operators. Since the special conditions do not require data be collected from all operators and allows the DAH to propose a reporting system that does not require data from all operators, the requirements already allow for sampling to some degree. Since the FRS may only be installed on a relatively small number of airplanes operated in distinct portions of the globe, it may not be possible to provide data for ''reasonably representative sample of global operations'' as stated in the EASA proposed special conditions. No changes were made as a result of this comment.

Appendix 1: Monte Carlo Analysis

Comment: The commenter requests that the phrase ''fleet average flammability exposure'' be changed to ''fleet average or warm day flammability exposure'' in paragraph (c) of Appendix 1. The commenter requests this change be made in order that the FAA and

EASA 737 FRM special requirements remain harmonized.

FAA Reply: We concur with the commenter. We intend that paragraph (c) of Appendix 1 require that, in addition to submitting the Monte Carlo analysis, the applicant must also identify any assumed variation in the parameters used in the analysis that affect either the fleet average or the warm day flammability exposure. The requested change is consistent with our intent.

Appendix 2: Monte Carlo Model

Comment: This commenter notes that the Web site listed for retrieving a copy of the FAA developed Monte Carlo model, referenced in Appendix 2, paragraph I(b) of the Boeing Model 747 FRM Final Special Conditions 25–285–SC, has been removed from paragraph (b) in the 737 FRM special conditions and requests the FAA explain this change.

FAA Reply: We removed the reference to the website because of concerns that this website would not be available in the future due to changes being made for the availability of an updated version of the Monte Carlo. The applicant has a copy of the Monte Carlo Model and has completed their flammability assessment using version 6A of the model. Reference to the website was provided primarily so that the public could have access to the model. Version 6A of the model can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** section of these final special conditions. However, since the proposed 737 FRM special conditions were originally published, we have also published a Notice of Proposed Rulemaking that includes the Monte Carlo assessment methodology by reference as part of the proposed rule and we have made this information available on the internet. Therefore, we have included the new website address as follows as a result of this comment. *http://www.fire.tc.faa.gov/systems/fueltank/FTFAM.stm.*

Comment: Another commenter requests clarification regarding how the FAA will ensure that a later version of the FAA Monte Carlo model will still provide an identical assessment of flammability exposure as Version 6A referenced in Appendix 2, paragraph I(b) in the 747 FRM Special Conditions 25–285–SC. The commenter would also like to know if an applicant can elect to comply with the Monte Carlo Version 6A, referenced in the 747 FRM Special Conditions, regardless of the aircraft type.

FAA Reply: The requirements of these special conditions apply to specific airplane models as shown in the applicability section of these final special conditions. Version 6A of the Monte Carlo has been identified in the Model 747 special conditions as the acceptable means of showing the flammability exposure meets the requirements of those special conditions. We do not expect that the applicant would be required to use a later version of the Monte Carlo to demonstrate compliance with these special conditions. However, we have proposed regulatory changes in the Notice of Proposed Rulemaking published in the **Federal Register** on November 23, 2005 (70 FR 70922). If the proposed requirements are adopted, Boeing and all other affected design approval holders would be required to conduct a flammability analysis using the Monte Carlo Model incorporated by reference within the amended § 25.981. Changes incorporated into the Monte Carlo in later versions include simplification and standardization of the inputs to the model. The NPRM would not allow use of version 6A of the Monte Carlo Model for demonstrating compliance. Any airplane model that is affected by the NPRM, including the Model 747, would need to comply with the requirements of the final rule. As always, an applicant may choose to request a finding of equivalent safety. No change was made as a result of this comment.

Appendix 2: Monte Carlo Variables and Data Tables

Comment: The commenter requests clarification of the relevance of the last sentence in paragraph (c)(2) of Appendix 2, ''The warm day subset (see paragraph II(b)(2) of Appendix 2 of these special conditions) for ground and climb uses a range of temperatures above 80° F and is included in the Monte Carlo model'' to the subject of this paragraph on Atmosphere.

FAA Reply: We concur and have changed the wording as follows: ''The warm day subset (see paragraph II(b)(1) of these special conditions) for ground and climb phases uses a range of temperatures above 80° F and is included in the Monte Carlo model.''

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. Should the type certificate 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 or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register;** however, as the certification date for the Boeing 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes is imminent, the FAA finds that good cause exits to making these special conditions effective upon issuance.

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 the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes, modified by Boeing Commercial Airplanes to include a flammability reduction means (FRM) that uses a nitrogen generation system to inert the center wing tank with nitrogen-enriched air (NEA).

Compliance with these special conditions does not relieve the applicant from compliance with the existing certification requirements.

I. Definitions

(a) *Bulk Average Fuel Temperature.* The average fuel temperature within the fuel tank, or different sections of the tank if the tank is subdivided by baffles or compartments.

(b) *Flammability Exposure Evaluation Time (FEET).* For the purpose of these special conditions, the time from the start of preparing the airplane for flight, through the flight and landing, until all payload is unloaded and all passengers and crew have disembarked. In the Monte Carlo program, the flight time is randomly selected from the Mission

Range Distribution (Table 3), the pre-flight times are provided as a function of the flight time, and the post-flight time is a constant 30 minutes.

(c) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition below.

(d) *Flash Point.* The flash point of a flammable fluid is the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or ''flash.'' The test for jet fuel is defined in ASTM Specification D56, ''Standard Test Method for Flash Point by Tag Close Cup Tester.''

(e) *Hazardous Atmosphere.* An atmosphere that may expose any person(s) to the risk of death, incapacitation, impairment of ability to self-rescue (escape unaided from a space), injury, or acute illness.

(f) *Inert.* For the purpose of these special conditions, the tank is considered inert when the oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude.

(g) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank to displace sufficient oxygen so that the ullage becomes inert.

(h) *Monte Carlo Analysis.* An analytical tool that provides a means to assess the degree of fleet average and warm day flammability exposure time for a fuel tank. See appendices 1 and 2 of these special conditions for specific requirements for conducting the Monte Carlo analysis.

(i) *Transport Effects.* Transport effects are the effects on fuel vapor concentration caused by low fuel conditions (mass loading), fuel condensation, and vaporization.

(j) *Ullage, or Ullage Space.* The volume within the fuel tank not occupied by liquid fuel at the time interval under evaluation.

II. System Performance and Reliability

The FRM, for the airplane model under evaluation, must comply with the following performance and reliability requirements:

(a) The applicant must submit a Monte Carlo analysis, as defined in appendices 1 and 2 of these special conditions, that—

(1) demonstrates that the overall fleet average flammability exposure of each fuel tank with an FRM installed is equal to or less than 3 percent of the FEET; and

(2) demonstrates that neither the performance (when the FRM is operational) nor reliability (including all periods when the FRM is inoperative) contributions to the overall fleet average flammability exposure of a tank with an FRM installed is more than 1.8 percent (this will establish appropriate maintenance inspection procedures and intervals as required in paragraph III (a) of these special conditions).

(3) identifies critical features of the fuel tank system to prevent an auxiliary fuel tank installation from increasing the flammability exposure of the center wing tank above that permitted under paragraphs II(a)(1), II(a)(2), and II(b) of these special conditions and to prevent degradation of the performance and reliability of the FRM.

(b) The applicant must submit a Monte Carlo analysis that demonstrates that the FRM, when functional, reduces the overall flammability exposure of each fuel tank with an FRM installed for warm day ground and climb phases to a level equal to or less than 3 percent of the FEET in each of these phases for the following conditions—

(1) The analysis must use the subset of 80 °F and warmer days from the Monte Carlo analyses done for overall performance; and

(2) The flammability exposure must be calculated by comparing the time during ground and climb phases (takeoff is included in the climb phase) for which the tank was flammable and not inert, with the total time for the ground and climb phases.

(c) The applicant must provide data from ground testing and flight testing that—

(1) validate the inputs to the Monte Carlo analysis needed to show compliance with (or meet the requirements of) paragraphs II (a), (b), and (c)(2) of these special conditions; and

(2) substantiate that the NEA distribution is effective at inerting all portions of the tank where the inerting system is needed to show compliance with these paragraphs.

(d) The applicant must validate that the FRM meets the requirements of paragraphs II (a), (b), and (c)(2) of these special conditions, with any combination of engine model, engine thrust rating, fuel type, and relevant pneumatic system configuration approved for the airplane.

(e) Sufficient accessibility for maintenance personnel, or the flightcrew, must be provided to FRM status indications necessary to meet the reliability requirements of paragraph II (a) of these special conditions.

(f) The access doors and panels to the fuel tanks with an FRM (including any tanks that communicate with an inerted tank via a vent system), and to any other confined spaces or enclosed areas that could contain NEA under normal conditions or failure conditions, must be permanently stenciled, marked, or placarded as appropriate to warn maintenance crews of the possible presence of a potentially hazardous atmosphere. The proposal for markings does not alter the existing requirements that must be addressed when entering airplane fuel tanks.

(g) Any FRM failures, or failures that could affect the FRM, with potential catastrophic consequences must not result from a single failure or a combination of failures not shown to be extremely improbable.

III. Maintenance

(a) Airworthiness Limitations must be identified for all maintenance and/or inspection tasks required to identify failures of components within the FRM that are needed to meet paragraphs II (a), (b), and (c)(2) of these special conditions. Airworthiness Limitations must also be identified for the critical fuel tank system features identified under paragraph II (a)(3).

(b) The applicant must provide the maintenance procedures that will be necessary and present a design review that identifies any hazardous aspects to be considered during maintenance of the FRM that will be included in the instructions for continued airworthiness (ICA) or appropriate maintenance documents.

(c) To ensure that the effects of component failures on FRM reliability are adequately assessed on an on-going basis, the applicant must—

(1) demonstrate effective means to ensure collection of FRM reliability data. The means must provide data affecting FRM availablity, such as component failures, and the FRM inoperative intervals due to dispatch under the MMEL;

(2) provide a report to the FAA on a quarterly basis for the first five years after service introduction. After that period, continued quarterly reporting may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRM meets, and will continue to meet, the exposure requirements of paragraphs II (a) and (b) of these special conditions;

(3) provide a report to the validating authorities for a period of at least two

years following introduction to service; and

(4) develop service instructions or revise the applicable airplane manual, per a schedule agreed on by the FAA, to correct any failures of the FRM that occur in service that could increase the fleet average or warm day flammability exposure of the tank to more than the exposure requirements of paragraphs II (a) and (b) of these special conditions.

Appendix 1

Monte Carlo Analysis

(a) A Monte Carlo analysis must be conducted for the fuel tank under evaluation to determine fleet average and warm day flammability exposure for the airplane and fuel type under evaluation. The analysis must include the parameters defined in appendices 1 and 2 of these special conditions. The airplane specific parameters and assumptions used in the Monte Carlo analysis must include:

(1) FRM Performance—as defined by system performance.

(2) Cruise Altitude—as defined by airplane performance.

(3) Cruise Ambient Temperature—as defined in appendix 2 of these special conditions.

(4) Overnight Temperature Drop—as defined in appendix 2 of these special conditions.

(5) Fuel Flash Point and Upper and Lower Flammability Limits—as defined in appendix 2 of these special conditions.

(6) Fuel Burn—as defined by airplane performance.

(7) Fuel Quantity—as defined by airplane performance.

(8) Fuel Transfer—as defined by airplane performance.

(9) Fueling Duration—as defined by airplane performance.

(10) Ground Temperature—as defined in appendix 2 of these special conditions.

(11) Mach Number—as defined by airplane performance.

(12) Mission Distribution—the applicant must use the mission distribution defined in appendix 2 of these special conditions or may request FAA approval of alternate data from the service history of the Model 737.

(13) Oxygen Evolution—as defined by airplane performance and as discussed in Appendix 2 of these special conditions.

(14) Maximum Airplane Range—as defined by airplane performance.

(15) Tank Thermal Characteristics—as defined by airplane performance.

(16) Descent Profile Distribution—the applicant must use a fixed 2500 feet per minute descent rate or may request FAA approval of alternate data from the service history of the Model 737.

(b) The assumptions for the analysis must include—

(1) FRM performance throughout the flammability exposure evaluation time;

(2) Vent losses due to crosswind effects and airplane performance;

(3) Any time periods when the system is operating properly but fails to inert the tank; **Note:** localized concentrations above the inert level as a result of fresh air that is drawn into the fuel tank through vents during descent would not be considered as flammable.

(4) Expected system reliability;

(5) The MMEL/MEL dispatch inoperative period assumed in the reliability analysis (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the FAA), including action to be taken when dispatching with the FRM inoperative (**Note:** The actual MMEL dispatch inoperative period data must be included in the engineering reporting requirement of paragraph III(c)(1) of these special conditions.);

(6) Possible time periods of system inoperability due to latent or known failures, including airplane system shut-downs and failures that could cause the FRM to shut down or become inoperative; and

(7) Effects of failures of the FRM that could increase the flammability of the fuel tank.

(c) The Monte Carlo analysis, including a description of any variation assumed in the parameters (as identified under paragraph (a) of this appendix) that affect fleet average or warm day flammability exposure, and substantiating data must be submitted to the FAA for approval.

Appendix 2

I. Monte Carlo Model

(a) The FAA has developed a Monte Carlo model that can be used to calculate fleet average and warm day flammability exposure for a fuel tank in an airplane. Use of the program requires the user to enter the airplane performance data specific to the airplane model being evaluated, such as maximum range, cruise mach number, typical step climb altitudes, tank thermal characteristics specified as exponential heating/cooling time constants, and equilibrium temperatures for various fuel tank conditions. The general methodology for conducting a Monte Carlo model is described in AC 25.981–2.

(b) The FAA model, or one with modifications approved by the FAA, must be used as the means of compliance with these special conditions. The accepted model can be obtained from either the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, or the following Web site: *http://www.fire.tc.faa.gov/systems/fueltank/FTFAM.stm.* The following procedures, input variables, and data tables must be used in the analysis if the applicant develops a unique model to determine fleet average flammability exposure for a specific airplane type.

II. Monte Carlo Variables and Data Tables

(a) Fleet average flammability exposure is the percent of the mission time the fuel tank ullage is flammable for a fleet of an airplane type operating over the range of actual or expected missions and in a world-wide range of environmental conditions and fuel properties. Variables used to calculate fleet average flammability exposure must include atmosphere, mission length (as defined in Special Condition I. Definitions, as FEET), fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage. Transport effects are not to be allowed as parameters in the analysis.

(b) For the purposes of these special conditions, a fuel tank is considered flammable when the ullage is not inert and the fuel vapor concentration is within the flammable range for the fuel type being used. The fuel vapor concentration of the ullage in a fuel tank must be determined based on the bulk average fuel temperature within the tank. This vapor concentration must be assumed to exist throughout all bays of the tank. For those airplanes with fuel tanks having different flammability exposure within different compartments of the tank, where mixing of the vapor or NEA does not occur, the Monte Carlo analysis must be conducted for the compartment of the tank with the highest flammability. The compartment with the highest flammability exposure for each flight phase must be used in the analysis to establish the fleet average flammability exposure. For example, the center wing fuel tank in some designs extends into the wing and has compartments of the tank that are cooled by outside air, and other compartments of the tank that are insulated from outside air. Therefore, the fuel temperature and flammability is significantly different between these compartments of the fuel tank.

(c) *Atmosphere.*

(1) To predict flammability exposure during a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise ambient temperatures and the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1 standard deviation value.

(2) The ground and cruise temperatures are linked by a set of assumptions on the atmosphere. The temperature varies with altitude following the International Standard Atmosphere (ISA) rate of change from the ground temperature until the cruise temperature for the flight is reached. Above this altitude, the ambient temperature is fixed at the cruise ambient temperature. This results in a variation in the upper atmospheric (tropopause) temperature. For cold days, an inversion is applied up to 10,000 feet, and then the ISA rate of change is used. The warm day subset (see paragraph II(b)(1) of these special conditions) for ground and climb uses a range of temperatures above 80 °F and is included in the Monte Carlo model.

(3) The analysis must include a minimum number of flights, and for each flight a separate random number must be generated for each of the three parameters (that is, ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1. The applicant can verify the output values from the Gaussian distribution using Table 2.

(d) *Fuel Properties.*

(1) *Flash point variation.* The variation of the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ±1 standard deviation value.

(2) *Upper and Lower Flammability Limits.* The flammability envelope of the fuel that must be used for the flammability exposure analysis is a function of the flash point of the fuel selected by the Monte Carlo for a given flight. The flammability envelope for the fuel is defined by the upper flammability limit (UFL) and lower flammability limit (LFL) as follows:

(i) LFL at sea level = flash point temperature of the fuel at sea level minus 10 degrees F. LFL decreases from sea level value with increasing altitude at a rate of 1 degree F per 808 ft.

(ii) UFL at sea level = flash point temperature of the fuel at sea level plus 63.5 degrees F. UFL decreases from the sea level value with increasing altitude at a rate of 1 degree F per 512 ft.

Note: Table 1 includes the Gaussian distribution for fuel flash point. Table 2 also includes information to verify output values for fuel properties. Table 2 is based on typical use of Jet A type fuel, with limited TS–1 type fuel use.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT TEMPERATURE, CRUISE AMBIENT TEMPERATURE, AND FUEL FLASH POINT

Temperature in deg F			
Parameter	Ground ambient temperature	Cruise ambient temperature	Flash point (FP)
Mean Temp	59.95	−70	120
Neg 1 std dev	20.14	8	8
Pos 1 std dev	17.28	8	8

TABLE 2.—VERIFICATION OF TABLE 1

Percent probability of temps & flash point being below the listed values	Ground ambient temperature deg F	Cruise ambient temperature deg F	Flash Point deg F	Ground ambient temperature deg C	Cruise ambient temperature deg C	Flash point (FP) deg C
1	13.1	−88.6	101.4	−10.5	−67.0	38.5
5	26.8	−83.2	106.8	−2.9	−64.0	41.6
10	34.1	−80.3	109.7	1.2	−62.4	43.2
15	39.1	−78.3	111.7	3.9	−61.3	44.3
20	43.0	−76.7	113.3	6.1	−60.4	45.1
25	46.4	−75.4	114.6	8.0	−59.7	45.9
30	49.4	−74.2	115.8	9.7	−59.0	46.6
35	52.2	−73.1	116.9	11.2	−58.4	47.2
40	54.8	−72.0	118.0	12.7	−57.8	47.8
45	57.4	−71.0	119.0	14.1	−57.2	48.3
50	59.9	−70.0	120.0	15.5	−56.7	48.9
55	62.1	−69.0	121.0	16.7	−56.1	49.4
60	64.3	−68.0	122.0	18.0	−55.5	50.0
65	66.6	−66.9	123.1	19.2	−55.0	50.6
70	69.0	−65.8	124.2	20.6	−54.3	51.2
75	71.6	−64.6	125.4	22.0	−53.7	51.9
80	74.5	−63.3	126.7	23.6	−52.9	52.6
85	77.9	−61.7	128.3	25.5	−52.1	53.5
90	82.1	−59.7	130.3	27.8	−51.0	54.6
95	88.4	−56.8	133.2	31.3	−49.4	56.2
99	100.1	−51.4	138.6	37.9	−46.3	59.2

(e) *Flight Mission Distribution.*

(1) The mission length for each flight is determined from an equation that takes the maximum mission length for the airplane and randomly selects multiple flight lengths based on typical airline use.

(2) The mission length selected for a given flight is used by the Monte Carlo model to select a 30-, 60-, or 90-minute time on the ground prior to takeoff, and the type of flight profile to be followed. Table 3 must be used to define the mission distribution. A linear interpolation between the values in the table must be assumed.

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Table 3. Mission Length Distribution
Airplane Maximum Range – Nautical Miles (NM)

		Airplane Maximum Range (NM)									
		1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
Flight Length (NM)		Distribution of Mission Lengths (%)									
From	To										
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7

7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

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(f) *Fuel Tank Thermal Characteristics.*

(1) The applicant must account for the thermal conditions of the fuel tank both on the ground and in flight. The Monte Carlo model, defines the ground condition using an equilibrium delta temperature (relative to the ambient temperature) the tank will reach given a long enough time, with any heat inputs from airplane sources. Values are also input to define two exponential time constants (one for a near empty tank and one for a near full tank) for the ground condition. These time constants define the time for the fuel in the fuel tank to heat or cool in response to heat input. The fuel is assumed to heat or cool according to a normal exponential transition, governed by the temperature difference between the current temperature and the equilibrium temperature, given by ambient temperature plus delta temperature. Input values for this data can be obtained from validated thermal models of the tank based on ground and flight test data. The inputs for the in-flight condition are similar but are used for in-flight analysis.

(2) Fuel management techniques are unique to each manufacturer's design. Variations in fuel quantity within the tank for given points in the flight, including fuel transfer for any purpose, must be accounted for in the model. The model uses a ''tank full'' time, specified in minutes, that defines the time before touchdown when the fuel tank is still full. For a center wing tank used first, this number would be the maximum flight time, and the tank would start to empty at takeoff. For a main tank used last, the tank will remain full for a shorter time before touchdown and would be ''empty'' at touchdown (that is, tank empty at 0 minutes before touchdown). For a main tank with reserves, the term empty means at reserve level rather than totally empty. The thermal data for tank empty would also be for reserve level.

(3) The model also uses a ''tank empty'' time to define the time when the tank is emptying, and the program uses a linear interpolation between the exponential time constants for full and empty during the time the tank is emptying. For a tank that is only used for long-range flights, the tank would be full only on longer-range flights and would be empty a long time before touchdown. For short flights, it would be empty for the whole flight. For a main tank that carried reserve fuel, it would be full for a long time and would only be down to empty at touchdown. In this case, empty would really be at reserve level, and the thermal constants at empty should be those for the reserve level.

(4) The applicant, whether using the available model or using another analysis tool, must propose means to validate thermal time constants and equilibrium temperatures to be used in the analysis. The applicant may propose using a more detailed thermal definition, such as changing time constants as a function of fuel quantity, provided the details and substantiating information are acceptable and the Monte Carlo model program changes are validated.

(g) *Overnight Temperature Drop.*

(1) An overnight temperature drop must be considered in the Monte Carlo analysis as it may affect the oxygen concentration level in the fuel tank. The overnight temperature drop for these special conditions will be defined using:

- A temperature at the beginning of the overnight period based on the landing temperature that is a random value based on a Gaussian distribution; and
- An overnight temperature drop that is a random value based on a Gaussian distribution.

(2) For any flight that will end with an overnight ground period (one flight per day out of an average of ''x'' number of flights per day, (depending on use of the particular airplane model being evaluated), the landing outside air temperature (OAT) is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—LANDING OAT

Parameter	Landing Temperature °F
Mean Temp	58.68
neg 1 std dev	20.55
pos 1 std dev	13.21

(3) The outside air temperature (OAT) drop for that night is to be chosen as a random value from the following Gaussian curve:

TABLE 5.—OAT DROP

Parameter	OAT Drop Temperature °F
Mean Temp	12.0
1 std dev	6.0

(h) *Oxygen Evolution.* The oxygen evolution rate must be considered in the Monte Carlo analysis if it can affect the flammability of the fuel tank or compartment. Fuel contains dissolved gases, and in the case of oxygen and nitrogen absorbed from the air, the oxygen level in the fuel can exceed 30 percent, instead of the normal 21 percent oxygen in air. Some of these gases will be released from the fuel during the reduction of ambient pressure experienced in the climb and cruise phases of flight. The applicant must consider the effects of air evolution from the fuel on the level of oxygen in the tank ullage during ground and flight operations and address these effects on the overall performance of the FRM. The applicant must provide the air evolution rate for the fuel tank under evaluation, along with substantiation data.

(i) *Number of Simulated Flights Required in Analysis.* For the Monte Carlo analysis to be valid for showing compliance with the fleet average and warm day flammability exposure requirements of these special conditions, the applicant must run the analysis for an appropriate number of flights to ensure that the fleet average and warm day flammability exposure for the fuel tank under evaluation meets the flammability limits defined in Table 6.

TABLE 6.—FLAMMABILITY LIMIT

Number of flights in Monte Carlo analysis	Maximum acceptable fuel tank flammability (percent)
1,000	2.73
5,000	2.88
10,000	2.91

TABLE 6.—FLAMMABILITY LIMIT—Continued

Number of flights in Monte Carlo analysis	Maximum acceptable fuel tank flammability (percent)
100,000	2.98
1,000,000	3.00

Issued in Renton, Washington, on December 5, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23936 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–38–AD; Amendment 39–14404; AD 2005–25–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with low pressure (LP) compressor fan blades, part number (P/N) FW18548 installed. That AD currently requires LP compressor fan blade replacement with new or previously reworked blades, or rework of the existing LP compressor fan blades. This ad requires the same actions but at reduced compliance times for certain airplane and engine rating combinations and certain maximum gross weight limits. This AD results from a number of new production LP compressor fan blades found with surfaces formed outside of design intent. We are issuing this AD to prevent possible multiple uncontained LP compressor fan blade failure, due to cracking in the blade root caused by increased stresses in the shear key slots.

DATES: This AD becomes effective January 17, 2006. The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of January 17, 2006.

ADDRESSES: Contact Rolls-Royce plc, P.O. Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418, for the service information identified in this AD.

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

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a new AD, applicable to RR models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with LP compressor fan blades, P/N FW18548 installed. We published the proposed AD in the **Federal Register** on May 27, 2005 (70 FR 30653). That action proposed to require LP compressor fan blade replacement with new or previously reworked blades, or rework of the existing LP compressor fan blades, at reduced compliance times from the previous AD, for certain airplane and engine rating combinations and certain maximum gross weight limits.

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.

Comments

We provided the public the opportunity to participate in the development of this AD. We considered the one comment received. The commenter supports the proposal.

Conclusion

We carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

About 392 RR RB211 Trent 800 series turbofan engines of the affected design are in the worldwide fleet. About 106 engines installed on airplanes of U.S. registry will be affected by this AD. We estimate about 100 work hours per engine are needed to perform blade rework, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $689,000.

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–38–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration amends 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 39–13736 (69 FR 44925, August 12, 2004) and by adding a new airworthiness directive, Amendment 39–14404, to read as follows:

2005–25–11 **Rolls-Royce plc:** Amendment 39–14404. Docket No. 2003–NE–38–AD.

Effective Date

(a) This AD becomes effective January 17, 2006.

Affected ADs

(b) This AD supersedes AD 2004–15–02, Amendment 39–13736.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines, with low pressure (LP) compressor fan blades, part number FW18548 installed. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Unsafe Condition

(d) This AD results from a number of new production LP compressor blades found with surfaces formed outside of design intent. We are issuing this AD to prevent possible multiple uncontained LP compressor fan blade failure, due to cracking in the blade root caused by increased stresses in the shear key slots.

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.

Actions Required for LP Compressor Fan Blades

(f) Replace LP compressor fan blades with new or previously reworked LP compressor blades before accumulating the specified cycles-since-new (CSN) in the following Table 1, or rework the existing blades as specified in paragraph (g) of this AD.

TABLE 1.—LP COMPRESSOR FAN BLADE REPLACEMENT OR REWORK SCHEDULE

Boeing 777 Series:	Airplane maximum gross weight (times 1,000 pounds)	RB211 Trent Engine Model	Replace or rework LP compressor fan blades before accumulating:
–300	660, 632.5	–884, –892, –884B	2,400 CSN.
–200	656	–892, –895	2,400 CSN.
–200	648	–892, –892B	3,200 CSN.
–200	632.5	–892B	3,200 CSN.
–200	632.5	–892	4,100 CSN.
–200	555	–884	4,100 CSN.
–200	545	–877	4,100 CSN.
–200	535	–875	4,100 CSN.
–200	506	–875	4,100 CSN.

(g) Rework LP compressor fan blades at or before accumulating the specified CSN in Table 1 of this AD. Follow paragraphs 3.B.(1) through 3.B.(22) of Accomplishment Instructions of RR service bulletin (SB) No. RB.211–72–E044, Revision 2, dated October 8, 2004, to do the blade rework.

(h) For engines moved between configurations, calculate the cycles remaining using either of the following:

(1) Subtract the total CSN from the most limiting configuration's limit from Table 1 of this AD; or

(2) Calculate the cycles remaining using the following equation:

$$X_r = L_c\left[1-\left(\frac{X_1}{L_1}+\frac{X_2}{L_2}+\frac{X_3}{L_3}+.....\right)\right]$$

Where:

Xr = Cycles remaining in current configuration.

Lc = Cyclic limit of current configuration from Table 1 of this AD.

Xn = Cycles accumulated in configuration n.

Ln = Cyclic limit in configuration n from Table 1 of this AD.

(i) Information on the source life of the cycle limits in Table 1 of this AD can be found in RR Alert SB No. RB.211–72–AE055, Revision 3, dated May 28, 2004.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(k) You must use Rolls-Royce plc Service Bulletin No. RB.211–72–E044, Revision 2, dated October 8, 2004, to perform the blade rework required by this AD. The Director of the **Federal Register** approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418. You can review a copy at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Related Information

(l) CAA airworthiness directive G–2004–030, dated December 23, 2004, and RR Alert SB No. RB.211–72–AE055, Revision 4, dated December 9, 2004, pertain to the subject of this AD.

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

Carlos Pestana,

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

[FR Doc. 05–23834 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22560; Directorate Identifier 2005–NM–061–AD; Amendment 39–14408; AD 2005–25–15]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Airplanes Equipped With CFE Company CFE738–1–1B Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain

Dassault Model Falcon 2000 airplanes equipped with CFE Company CFE738–1–1B turbofan engines. This AD requires determining the serial number of the engines installed on the airplane, inspecting any affected engine to verify that a spherical bearing is installed on the attachment fitting of the engine mount, and corrective action if necessary. This AD results from a report of a missing spherical bearing on the attachment fitting of the front engine mount on an in-service airplane, and subsequent damage and abnormal fatigue of the attachment fitting. We are issuing this AD to prevent reduced structural integrity of the engine mount, which could result in possible separation of an engine from the airplane.

DATES: This AD becomes effective January 17, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 17, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply certain Dassault Model Falcon 2000 airplanes equipped with CFE Company CFE738–1–1B turbofan engines. That NPRM was published in the **Federal Register** on September 30, 2005 (70 FR 57217). That NPRM proposed to require determining the serial number of the engines installed on the airplane, inspecting any affected engine to verify that a spherical bearing is installed on the attachment fitting of the engine mount, and corrective action if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Costs of Compliance

This inspection affects about 7 airplanes of U.S. registry. The inspection will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $910, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–25–15 Dassault Aviation: Amendment 39–14408. Docket No. FAA–2005–22560; Directorate Identifier 2005–NM–061–AD

Effective Date

(a) This AD becomes effective January 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category; equipped with CFE Company CFE738–1–1B turbofan engines.

Unsafe Condition

(d) This AD results from a report of a missing spherical bearing on the attachment fitting of the front engine mount on an in-service airplane, and subsequent damage and abnormal fatigue of the attachment fitting.

We are issuing this AD to prevent reduced structural integrity of the engine mount, which could result in possible separation of an engine from the airplane.

Compliance

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

Determine Serial Number (S/N) and Inspect if Necessary

(f) Within the applicable compliance time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD: Determine the serial number of the engines installed on the airplane, as identified in the table in paragraph 1.A., ''Effectivity,'' of Dassault Service Bulletin F2000–299, dated July 23, 2004; if any affected serial number is found on any engine, perform a borescope inspection to verify that a spherical bearing is installed on the attachment fitting of the front engine mount by doing all the applicable actions specified in the Accomplishment Instructions of the service bulletin.

(1) For airplanes with any engine having 850 total landings or less as of the effective date of this AD: Before the accumulation of 880 total landings on the engine.

(2) For airplanes with any engine having more than 850 total landings, but 1,000 total landings or less as of the effective date of this AD: Within 1 month after the effective date of this AD.

(3) For airplanes with any engine having more than 1,000 total landings as of the effective date of this AD: Within 10 landings after the effective date of this AD.

Corrective Action

(g) If any spherical bearing is found missing during the inspection required by paragraph (f) of this AD: Before further flight, repair according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent).

No Reporting Requirement

(h) This AD does not require submitting reporting information to the manufacturer.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(j) French airworthiness directive F–2004–128, issued August 4, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Dassault Service Bulletin F2000–299, dated July 23, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 2, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23829 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22928; Directorate Identifier 2005–NE–43–AD; Amendment 39–14406; AD 2005–25–13]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 2B and 2B1 Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Arriel 2B and 2B1 turboshaft engines without modification TU22 incorporated. This AD requires initial and repetitive visual checks of the free turbine shield for cracks. This AD results from reports of several free turbine shields found with large circumferential cracks. We are issuing this AD to prevent failure of the free turbine shield, leading to engine misalignment, in-flight engine shutdown, emergency autorotation landing, or accident.

DATES: Effective December 28, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 28, 2005.

We must receive any comments on this AD by February 13, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition might exist on Turbomeca Arriel 2B and 2B1 turboshaft engines without modification TU22 incorporated. The DGAC advises that on several of these engines, large circumferential cracks were found in the free turbine shield at the blending radius between the containment shield and the rear flange. These cracks could cause a loss of engine alignment during maneuvering loads and lead to in-flight engine shutdown.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert Mandatory Service Bulletin No. A292 72 2821, dated June 27, 2005, that describes procedures for visual checks of the free turbine shield for cracks. The DGAC classified this service bulletin as mandatory and issued AD F–2005–162, dated September 28, 2005, in order to ensure the airworthiness of these Arriel 2B and 2B1 engines in France.

Bilateral Airworthiness Agreement

These Turbomeca Arriel 2B and 2B1 turboshaft engines are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the

Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Arriel 2B and 2B1 turboshaft engines without modification TU22 incorporated, of the same type design. We are issuing this AD to prevent failure of the free turbine shield, leading to engine misalignment, in-flight engine shutdown, emergency autorotation landing, or accident. This AD requires initial visual checks of the free turbine shield for cracks within 10 operating hours of the effective date of the AD, repetitive visual checks at certain compliance intervals based on shield condition, and replacement if necessary. This AD also allows incorporation of Turbomeca modification TU22 as optional terminating action to the required repetitive visual checks. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–22928; Directorate Identifier 2005–NE–43–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–25–13 Turbomeca: Amendment 39–14406. Docket No. FAA–2005–22928; Directorate Identifier 2005–NE–43–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 2B and 2B1 turboshaft engines without modification TU22 incorporated. These engines are installed on, but not limited to, Eurocopter France AS350B3 and EC130B4 helicopters.

Unsafe Condition

(d) This AD results from reports of several free turbine shields found with large circumferential cracks. We are issuing this AD to prevent failure of the free turbine shield, leading to engine misalignment, in-flight engine shutdown, emergency autorotation landing, or accident.

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.

Visual Checks

(f) Within 10 operating hours after the effective date of this AD:

(1) Visually check the free turbine shield for cracks using 2.A. through 2.D.(2) of Turbomeca Mandatory Service Bulletin (MSB) A292 72 2821, dated June 27, 2005.

(2) Replace the free turbine shield or establish a repetitive check interval using the criteria in the following Table 1:

TABLE 1.—FREE TURBINE SHIELD CHECK, DISPOSITION CRITERIA

Number of cracks:	Crack locations using appendix 1 from MSB A292 72 2821:	Crack length:	Re-check using paragraphs (f)(1) and (f)(2) of this AD, or replace:
(i) 0	Not Applicable	Not Applicable	Re-check shield within 500 N1 cycles.
(ii) 1	D–A	(A) Less than 170 mm	Re-check shield within 100 N1 cycles.
		(B) Between 170 mm and 200 mm	Re-check shield daily.
		(C) Greater than 200 mm	Replace shield before further flight.
(iii) 1	A–B	(A) Less than 201 mm	Re-check within 100 cycles.
	(5:00 o'clock Area)	(B) Between 201 mm and 248 mm	Re-check daily.
		(C) Greater than 248 mm	Replace shield before further flight.
(iv) 1	C–D	(A) Less than 297 mm	Re-check within 100 cycles.
	(8:00 o'clock Area)	(B) Between 297 mm and 366 mm	Re-check daily.
		(C) Greater than 366 mm	Replace shield before further flight.
(v) 2	One in A–B and one in C–D.	(A) Zone 1 using Appendix 3 of MSB A292 72 2821.	Re-check within 100 cycles.
		(B) Zone 2 using Appendix 3 of MSB A292 72 2821.	Re-check daily.
		(C) Zone 3 using Appendix 3 of MSB A292 72 2821.	Replace shield before further flight.
(vi) 2	Either one or both in D–A.	Any	Replace shield before further flight.
(vii) 2	Both in A–B	Any	Replace shield before further flight.
(viii) 2	Both in C–D	Any	Replace shield before further flight.
(ix) 3 or more	Any	Any	Replace shield before further flight.

(3) You may treat multiple cracks adjacent to each other as a single crack by using the length measured between the two extremities of the cracks.

(4) Single cracks that span two locations must use the location that yields the most conservative re-check interval or replacement requirement.

Optional Terminating Action

(g) Incorporation of Turbomeca modification TU22 terminates the repetitive visual checks required by this AD.

Alternative Methods of Compliance

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

Related Information

(i) Direction Generale de L'Aviation Civile AD F–2005–162, dated September 28, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Turbomeca Mandatory Service Bulletin A292 72 2821, dated June 27, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Carlos Pestana,

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

[FR Doc. 05–23831 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23004; Directorate Identifier 2005–NE–42–AD; Amendment 39–14405; AD 2005–25–12]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Astazou XIV B and XIV H Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Astazou XIV B and XIV H turboshaft engines that have operated with air intake noise suppressors. This AD requires ensuring proper installation of air intake noise suppressors, and ultrasonically inspecting 2nd stage axial compressor wheel blades operated in engines with improperly installed intake noise suppressors. This AD results from several reports of failure of 2nd stage axial compressor wheel blades. We are issuing this AD to prevent failure of 2nd stage axial compressor wheel blades, leading to in-flight engine shutdown and autorotation landing.

DATES: Effective December 28, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 28, 2005.

We must receive any comments on this AD by February 13, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Fax: (202) 493–2251.

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

Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition might exist on Turbomeca Astazou XIV B and XIV H turboshaft engines that have operated with an air intake noise suppressor. The DGAC advises that several cases of failure of 2nd stage axial compressor wheel blades have occurred in service. An investigation revealed that these failures result from aerodynamic-induced stresses caused by improperly installed air intake noise suppressors. An improperly installed air intake noise suppressor has too great an angular position on the air intake casing. This in turn results in downstream airflow turbulence causing high stresses in the 2nd stage axial compressor wheel blades.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert Service Bulletin (ASB) No. A283 72 0800, dated February 5, 2004, that describes instructions for ultrasonic inspection of 2nd stage axial compressor wheel blades. The DGAC classified this alert service bulletin as mandatory and issued AD F–2004–029, dated February 18, 2004, in order to ensure the airworthiness of these Astazou XIV B and XIV H turboshaft engines in France.

Bilateral Airworthiness Agreement

These Astazou XIV B and XIV H turboshaft engines are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Astazou XIV B and XIV H turboshaft engines of the same type design. We are issuing this AD to prevent failure of 2nd stage axial compressor wheel blades, leading to in-flight engine shutdown and autorotation landing. This AD requires:

• Before further flight, ensuring proper installation of air intake noise suppressors; and

• For engines operated with improperly installed air intake noise suppressors, removing the engine and performing an ultrasonic inspection of 2nd stage axial compressor wheel blades, within 50 flight hours or 6 months after the effective date of this AD, whichever occurs first, and replacing blades that fail inspection.

You must use the service information described previously to perform the removals, blade inspections, replacements, and installations required by this AD.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–23004; Directorate Identifier 2005–NE–42–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2005–25–12 Turbomeca: Amendment 39–14405. Docket No. FAA–2005–23004; Directorate Identifier 2005–NE–42–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Astazou XIV B and XIV H turboshaft engines that have operated with air intake noise suppressors. These engines are installed on, but not limited to, single-engine Aerospatiale AS319B ''Alouette III'' and AS342J ''Gazelle'' helicopters.

Unsafe Condition

(d) This AD results from several reports of failure of 2nd stage axial compressor wheel blades. We are issuing this AD to prevent failure of 2nd stage axial compressor wheel blades, leading to in-flight engine shutdown and autorotation landing.

Compliance

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

Ensure Proper Installation of Air Intake Noise Suppressors

(f) Before further flight, ensure proper installation of air intake noise suppressors.

(g) You can find information on doing this in aircraft maintenance manual (AMM) section 71–30–41 for Aerospatiale AS319B helicopters, and in AMM section 71–61–401 for Aerospatiale AS342J helicopters.

Engines That Operated With Improperly Installed Air Intake Noise Suppressors

(h) For engines that operated with improperly installed air intake noise suppressors:

(1) Perform an ultrasonic inspection of 2nd stage axial compressor wheel blades, within 50 flight hours or 6 months after the effective date of this AD, whichever occurs first, and replace blades that fail inspection.

(2) Use 2.B.(1) through 2.B.(2)(b) of Turbomeca Alert Service Bulletin No. A283 72 0800, dated February 5, 2004, to do the inspection.

Alternative Methods of Compliance

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

Related Information

(j) Direction Generale de L'Aviation Civile airworthiness directive F–2004–029, dated February 18, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Turbomeca Alert Service Bulletin No. A283 72 0800, dated February 5, 2004, to perform the removals, blade inspections, replacements, and installations required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Carlos Pestana,

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

[FR Doc. 05–23827 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22290; Directorate Identifier 2005–NM–129–AD; Amendment 39–14407; AD 2005–25–14]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This AD requires modifying the wiring of the starter-generator terminal block. This AD results from a report of total electrical failure just as the airplane landed. We are issuing this AD to prevent total electrical failure and consequent reduced controllability of the airplane.

DATES: This AD becomes effective January 17, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 17, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. That NPRM was published in the **Federal Register** on September 6, 2005 (70 FR 52947). That NPRM proposed to require modifying the wiring of the starter-generator terminal block.

Comments

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

Support for the NPRM and Request for Further Information About Alternative Methods of Compliance (AMOCs)

One commenter concurs with our decision to act on the manufacturer's proposed solution to the unsafe condition. The commenter also requests information about what kinds of AMOCs we will find acceptable for compliance with the actions required by the final rule.

It is difficult to describe the specific types of AMOCs that we will find acceptable for compliance with this AD because AMOCs vary according to the airplane operator, and cannot be predicted until we receive a written request. In general, AMOCs are different approaches or techniques that are not specified in an AD that can, after our approval, be used to correct an unsafe condition on an aircraft or aircraft product. The AMOC must be acceptable to accomplish the intent of the AD, provide an acceptable level of safety, and have sufficient technical justification so that we can evaluate the request. For example, a compliance time that differs from the requirements of the AD can be approved if the revised time period in combination with other mitigating actions provides an acceptable level of safety for the requirements of the AD. The purpose of AMOCs is to ensure the most efficient method of compliance for individual operators and also to eliminate the need for constant AD revisions when acceptable methods are developed for AD compliance.

It is not necessary to change the final rule in this regard.

Clarification of AMOC Paragraph

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

Conclusion

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

Costs of Compliance

This AD affects about 57 airplanes of U.S. registry. The actions take about 10 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $37,050, or $650 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–25–14 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14407. Docket No. FAA–2005–22290; Directorate Identifier 2005–NM–129–AD.

Effective Date

(a) This AD becomes effective January 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of total electrical failure just as the airplane landed. We are issuing this AD to prevent total electrical failure and consequent reduced controllability of the airplane.

Compliance

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

Modification

(f) Within 6 months after the effective date of this AD: Modify the wiring of the starter-generator terminal block in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–24–041, dated May 10, 2004.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate,

FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(h) British airworthiness directive G–2005–0006, dated February 7, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Service Bulletin J41–24–041, dated May 10, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 2, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23830 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30470; Amdt. No. 3145]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 13, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 13, 2005.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase: Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription: Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd, Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 2, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
11/15/05	ID	LEWISTON	LEWISTON-NEZ PERCE COUNTY	5/0530	ILS RWY 26, AMDT 11/B.
11/17/05	AK	CHALKYITSIK	CHALKYITSIK	5/0723	RNAV (GPS) RWY 21, ORIG-A.
11/17/05	AK	CHALKYITSIK	CHALKYITSIK	5/0724	RNAV (GPS) RWY 3, ORIG-A.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0739	RNAV (GPS) RWY 9, ORIG-B.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0741	RNAV (GPS) RWY 27, ORIG-B.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0742	RNAV (GPS) RWY 3, ORIG-B.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0744	RNAV (GPS) RWY 15, ORIG-C.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0746	RNAV (GPS) RWY 33, ORIG-B.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0747	RNAV (GPS) RWY 21, ORIG-B.
11/17/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/0748	VOR OR TACAN RWY 15, AMDT 21B.
11/21/05	KS	WICHITA	WICHITA MID-CONTINENT	5/0750	ILS OR LOC RWY 19L, ORIG-A.
11/28/05	KS	WICHITA	WICHITA MID-CONTINENT	5/0769	RNAV (GPS) Y RWY 19L, ORIG-A.
11/28/05	KS	WICHITA	WICHITA MID-CONTINENT	5/0771	RNAV (GPS) Z RWY 19L, ORIG-A.
11/22/05	MI	HOLLAND	TULIP CITY	5/0866	ILS OR LOC/DME RWY 26, ORIG-A.
11/28/05	MO	JOPLIN	JOPLIN REGIONAL	5/0884	RNAV (GPS) RWY 31, ORIG-A.
11/28/05	MO	JOPLIN	JOPLIN REGIONAL	5/0885	LOC BC RWY 31, AMDT 21A.
11/23/05	OR	MCMINNVILLE	MCMINNVILLE MUNI	5/0890	ILS OR LOC RWY 22, AMDT 3B.
11/23/05	ID	POCATELLO	POCATELLO REGIONAL	5/0910	ILS OR LOC RWY 21, AMDT 26A.
11/23/05	ID	POCATELLO	POCATELLO REGIONAL	5/0911	RNAV (GPS) RWY 21, ORIG-A.
11/23/05	ID	POCATELLO	POCATELLO REGIONAL	5/0912	VOR/DME OR TACAN RWY 21, AMDT 10A.
11/28/05	MO	COLUMBIA	COLUMBIA REGIONAL	5/0921	VOR RWY 13 AMDT 3B.
11/22/05	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	5/0850	ILS RWY 15R, AMDT 1B.
11/22/05	AZ	CHANDLER	CHANDLER MUNI	5/0862	NDB RWY 4R, ORIG-B.
11/22/05	AZ	CHANDLER	CHANDLER MUNI	5/0863	RNAV (GPS) RWY4R, ORIG-A.
11/22/05	AZ	CHANDLER	CHANDLER MUNI	5/0864	VOR RWY 4R, ORIG-A.
11/29/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/1030	ILS OR LOC RWY 21, AMDT 9C.
11/29/05	SD	SIOUX FALLS	JOE FOSS FIELD	5/1031	ILS OR LOC RWY 3, AMDT 27C.
11/28/05	CO	WRAY	WRAY MUNI	5/0991	RNAV (GPS) RWY 17, ORIG-A.
11/28/08	CO	WRAY	WRAY MUNI	5/0992	RNAV (GPS) RWY 35, ORIG-A.
11/29/05	CO	TRINIDAD	PERRY STOKES	5/1008	RNAV (GPS)-B, ORIG-A.
11/29/05	CO	RIFLE	GARFIELD COUNTY REGIONAL	5/1014	ILS RWY 26, ORIG-C.
11/29/05	CO	GRAND JUNCTION	WALKER FIELD	5/1017	ILS OR LOC/DME RWY 11, AMDT 14B.
11/29/05	CO	CRAIG	CRAIG-MOFFAT	5/1019	VOR/DME RWY 7, AMDT 2B.
11/29/05	GA	MILLEN	MILLEN	5/1028	NDB RWY 17, ORIG-A.
11/29/05	GA	MILLEN	MILLEN	5/1029	RNAV (GPS) RWY 17, ORIG-A.
11/29/05	CO	MONTROSE	MONTROSE REGIONAL	5/1035	ILS OR LOC/DME RWY 17, AMDT 1A.

[FR Doc. 05–23851 Filed 12–12–05; 8:45 am]
BILLING CODE 4910–13–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 905

[NCPPC 114]

Qualification Requirements for Participation in the National Fingerprint File Program

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Final rule.

SUMMARY: The Compact Council (Council), established pursuant to the National Crime Prevention and Privacy Compact (Compact) Act of 1998, is publishing a rule requiring a Compact Party to meet minimum qualification standards while participating in the National Fingerprint File (NFF) Program.

DATES: This rule is effective on January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, FL 32302, telephone number (850) 410–7100.

SUPPLEMENTARY INFORMATION: This document finalizes the Compact Council rule proposed in the **Federal Register** on June 22, 2005. The Compact Council accepted comments on the proposed rule until July 22, 2005; however, no comments were received.

Administrative Procedures and Executive Orders

Administrative Procedure Act

The Compact Council, composed of 15 members including 11 state and local governmental representatives, is authorized to promulgate rules, procedures, and standards for the effective and proper use of the III System for noncriminal justice purposes. The Compact Council is publishing this rule in compliance with the mandate that rules, procedures, or standards established by the Council be published in the **Federal Register**. *See* 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801–804) is not applicable to the Council's rule because the Compact Council is not a ''Federal agency'' as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. *See* 5 U.S.C. 804.

List of Subjects in 28 CFR Part 905

Crime, Privacy, Information, Safety.

■ Accordingly, title 28 of the Code of Federal Regulations, chapter IX is amended by adding part 905 to read as follows:

PART 905—NATIONAL FINGERPRINT FILE (NFF) PROGRAM QUALIFICATION REQUIREMENTS

Sec.

905.1 Definition.
905.2 Purpose and authority.
905.3 Participation in the NFF Program.

Authority: 42 U.S.C. 14616.

§ 905.1 Definition.

''National Fingerprint File'' means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

§ 905.2 Purpose and authority.

The purpose of this part 905 is to require each National Fingerprint File (NFF) participant to meet the standards set forth in the NFF Qualification Requirements as established by the Compact Council (Council). The Council is established pursuant to the National Crime Prevention and Privacy Compact Act (Compact), title 42, U.S.C., § 14616.

§ 905.3 Participation in the NFF Program.

Each NFF Program participant shall meet the standards set forth in the NFF Qualification Requirements as established by the Council and endorsed by the FBI's Criminal Justice Information Services Advisory Policy Board; however, such standards shall not interfere or conflict with the FBI's administration of the III, including the NFF, for criminal justice purposes. Each participant's performance will be audited and measured by criteria designed to assess compliance with those requirements. Measurements by which to determine compliance to the NFF Qualification Requirements are outlined in the FBI and State Sampling Standards. (For a copy of the standards, contact the FBI Compact Officer, 1000 Custer Hollow Road, Module C–3, Clarksburg, WV 26306–0001.)

Dated: November 3, 2005.

Donna M. Uzzell,

Compact Council Chairman.

[FR Doc. 05–23948 Filed 12–12–05; 8:45 am]
BILLING CODE 4410–02–P

PRESIDIO TRUST

36 CFR Part 1011

RIN 3212–AA07

Debt Collection

AGENCY: Presidio Trust.

ACTION: Final rule.

SUMMARY: The Presidio Trust published a proposed rule in the **Federal Register** on August 4, 2005 (70 FR 44870–44878) concerning debt collection in connection with the area under the administrative jurisdiction of the Presidio Trust. The public comment period on the proposed rule closed on September 19, 2005. No comment was received by the Presidio Trust. This final rule adopts debt collection regulations to conform to the Debt Collection Improvement Act of 1996, the Federal Claims Collection

Standards, and other laws applicable to the collection of nontax debts owed to the Presidio Trust.

DATES: This final rule is effective January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, Presidio Trust, at (415) 561–5300, 34 Graham Street, San Francisco, CA 94129.

Dated: December 7, 2005.

Karen A. Cook,

General Counsel.

SUPPLEMENTARY INFORMATION:

Background

This final rule establishes the Presidio Trust's debt collection regulations. They conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the Federal Claims Collection Standards, 31 CFR Chapter IX (parts 900 through 904), and other laws applicable to the collection of nontax debt owed to the Government.

This final rule provides procedures for the collection of nontax debts owed to the Presidio Trust. The Presidio Trust adopts the Governmentwide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390), and supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Presidio Trust operations. The Presidio Trust may, but is not required to, adopt additional procedures and guidelines consistent with this final rule, the FCCS, and other applicable Federal laws, policies and procedures. This final rule also provides the procedures for the collection of debts owed to another Federal agency when a request for offset is received from another Federal agency.

This final rule does not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and regulations, policies and procedures issued by the Internal Revenue Service.

Nothing in this final rule precludes the use of collection remedies not contained in this rule. For example, the Presidio Trust may collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. The Presidio Trust may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

Section Analysis

Subpart A—Sections 1011.1 through 1011.3

Subpart A of this final rule addresses the general provisions applicable to the collection of nontax debts owed to the Presidio Trust.

As stated in section 1011.2 of this final rule, nothing in this regulation requires the Presidio Trust to duplicate notices or administrative proceedings required by contract, this regulation or other laws or regulations. Thus, for example, the Presidio Trust is not required to provide a debtor with two hearings on the same issue merely because the entity uses two different collection tools, each of which requires that the debtor be provided with a hearing.

Subpart B—Sections 1011.4 through 1011.20

Subpart B of this final rule describes the procedures to be followed by the Presidio Trust when collecting debts owed to the Presidio Trust. Among other things, subpart B outlines the due process procedures the Presidio Trust will follow when using offset (administrative, tax refund and salary) to collect a debt, when garnishing a debtor's wages, or before reporting a debt to a credit bureau. Specifically, the Presidio Trust will provide debtors with notice of the amount and type of debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, and the consequences to the debtor if the debt is not paid. Notices may be sent by first-class mail, and if not returned by the United States Postal Service, the Presidio Trust may presume that the notice was received. See *Rosenthal* v. *Walker,* 111 U.S. 185 (1884); *Mahon* v. *Credit Bureau of Placer County Incorporated,* 171 F.3d 1197 (9th Cir. 1999). Nothing in this final rule precludes the Presidio Trust from sending a notice by certified mail if appropriate or required by statute.

Subpart B also explains the circumstances under which the Presidio Trust may waive interest, penalties and administrative costs.

This final rule also incorporates procedures for several collection remedies authorized by the DCIA, such as administrative wage garnishment.

Subpart C—Sections 1011.21 and 1011.22

Subpart C of this final rule describes the procedures to be followed when another Federal agency would like to use the offset process to collect a debt from payment issued by the Presidio Trust as a payment agency.

Regulatory Analysis

E.O. 12866, Regulatory Review

This final rule is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

The Presidio Trust certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

Unfunded Mandates Reform Act

This final rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

Congressional Review Act

The Presidio Trust has submitted a copy of this rule, together with other required information, to each House of Congress and to the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' within the meaning of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

List of Subjects for 36 CFR Part 1011

Administrative practice and procedure, Claims, Debt collections, Federal employees, Garnishment of wages, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, 36 CFR part 1011 is added to read as follows:

PART 1011—DEBT COLLECTION

Subpart A—General Provisions

Sec.

1011.1 What definitions apply to the regulations in this part?
1011.2 Why is the Presidio Trust issuing these regulations and what do they cover?
1011.3 Do these regulations adopt the Federal Claims Collection Standards?

Subpart B—Procedures to Collect Presidio Trust Debts 1011.4 What notice will the Presidio Trust send to a debtor when collecting a debt?

1011.5 What interest, penalty charges and administrative costs will the Presidio Trust add to a debt?
1011.6 When will the Presidio Trust allow a debtor to enter into a repayment agreement?

1011.7 When will the Presidio Trust compromise a debt?
1011.8 When will the Presidio Trust suspend or terminate debt collection on a debt?
1011.9 When will the Presidio Trust transfer a debt to the Financial Management Service for collection?
1011.10 How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?
1011.11 How will the Presidio Trust use tax refund offset to collect a debt?
1011.12 How will the Presidio Trust offset a Federal employee's salary to collect a debt?
1011.13 How will the Presidio Trust use administrative wage garnishment to collect a debt from a debtor's wages?
1011.14 How will the Presidio Trust report debts to credit bureaus?
1011.15 How will the Presidio Trust refer debts to private collection contractors?
1011.16 When will the Presidio Trust refer debts to the Department of Justice?
1011.17 Will a debtor who owes a debt be ineligible for Presidio Trust licenses, permits, leases, privileges or services?
1011.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death or disability?
1011.19 Will the Presidio Trust issue a refund if money is erroneously collected on a debt?
1011.20 Will the Presidio Trust's failure to comply with these regulations be a defense to a debt?

Subpart C—Procedures for Offset of Presidio Trust Payments to Collect Debts Owed To Other Federal Agencies

1011.21 How do other Federal agencies use the offset process to collect debts from payments issued by the Presidio Trust?
1011.22 What does the Presidio Trust do upon receipt of a request to offset the salary of a Presidio Trust employee to collect a debt owed by the employee to another Federal agency?

Authority: 16 U.S.C. 460bb appendix, as amended.

Subpart A—General Provisions

§ 1011.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term ''administrative offset'' includes, without limitation, the offset of federal salary, vendor, retirement, and Social Security benefit payments. The terms ''centralized administrative offset'' and ''centralized offset'' refer to the process by which the Treasury Department's Financial Management Service offsets federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency may, without first obtaining a court order, order a non-Federal employer to withhold amounts from a debtor's wages to satisfy a delinquent debt.

Agency or *Federal agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial or legislative branch of the federal government, including government corporations.

Certification means a written statement received by a paying agency or disbursing official that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Compromise means the settlement or forgiveness of all or a portion of a debt.

Creditor agency means any Federal agency that is owed a debt and includes a debt collection center when it is acting on behalf of the Presidio Trust.

Debt means any amount of money, funds or property that has been determined by an appropriate agency official to be owed to the United States by a person. As used in this part, the term ''debt'' does not include debts arising under the Internal Revenue Code.

Debt collection center means the Treasury Department or any agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the Presidio Trust's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Disposable pay means that part of an employee's pay that remains after deductions that are required by law to be withheld have been made.

Employee or *Federal employee* means a current employee of the Presidio Trust or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States or of the National Guard.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900–904.

FMS means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

IRS means the Internal Revenue Service.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, the Presidio Trust may be both the paying agency and the creditor agency.

Person means an individual, corporation, partnership, association, organization, state or local government, or any other type of entity other than a Federal agency.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the Presidio Trust.

Salary offset means a type of administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Tax refund offset means the reduction of a tax refund by the amount of a delinquent debt owed to the Presidio Trust.

Treasury Department means the United States Department of the Treasury.

Treasury Offset Program means the Treasury Department's program for withholding funds payable by the United States to a person to satisfy a debt owed by the person utilizing the Financial Management Service's system that compares information about payments with information about debts.

§ 1011.2 Why is the Presidio Trust issuing these regulations and what do they cover?

(a) *Scope.* The Presidio Trust is issuing these regulations to provide procedures for the collection of debts owed to the Presidio Trust. This part also provides procedures for collection of other debts owed to the United States when a request for offset of a Treasury payment is received by the Treasury Department from another agency (for example, when a Presidio Trust employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to the Presidio Trust when collecting a debt and to persons who owe a debt to the Presidio Trust, or to Federal agencies requesting offset of a payment issued by the Presidio Trust as a paying agency (including salary payments to Presidio Trust employees).

(2) This part does not apply to tax debts.

(3) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part.

(c) *Additional policies, guidelines and procedures.* The Presidio Trust may adopt additional policies, guidelines and procedures consistent with this part and other applicable law.

(d) *Duplication not required.* Nothing in this part requires the Presidio Trust to duplicate notices or administrative proceedings required by contract, this part or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* The Presidio Trust may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order to provide the Presidio Trust with flexibility in determining which remedies will be most efficient in collecting the particular debt.

(f) *Cross-servicing with the Treasury Department.* These regulations authorize the Presidio Trust to enter a cross-servicing agreement with the Treasury Department under which the Treasury Department will take authorized action to collect debts owed to the Presidio Trust.

§ 1011.3 Do these regulations adopt the Federal Claims Collections Standards?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Presidio Trust operations.

Subpart B—Procedures to Collect Presidio Trust Debts

§ 1011.4 What notice will the Presidio Trust send to a debtor when collecting a debt?

(a) *Notice requirements.* The Presidio Trust will aggressively collect debts. The Presidio Trust will send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a debt. The notice(s) will be sent to the debtor's most current address for the debtor in the records of the Presidio Trust. Except as otherwise provided in paragraph (b) of this section, the written notice(s) will explain to the debtor:

(1) The amount, nature and basis of the debt;

(2) How interest, penalty charges and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless waived (see § 1011.5 of this part);

(3) The date by which payment is due and that the debt will be considered delinquent if payment is not received by the Presidio Trust by the due date, which date will not be less than 30 days after the date of the notice, and the date by which payment must be received by the Presidio Trust to avoid the enforced collection actions described in paragraph (a)(6) of this section, which date will not be less than 60 days after the date of the notice;

(4) How the debtor may enter into a written agreement to repay the debt voluntarily under terms acceptable to the Presidio Trust (see § 1011.6 of this part);

(5) The name, address and telephone number of a contact person within the Presidio Trust;

(6) The Presidio Trust's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Use administrative offset or other offset to offset the debtor's federal payments, including, without limitation, income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other federal payments (see § 1011.10 through 1011.12 of this part);

(ii) Refer the debt to a private collection agency (see § 1011.15 of this part);

(iii) Report the debt to a credit bureau (see § 1011.14 of this part);

(iv) Garnish the debtor's wages through administrative wage garnishment (see § 1011.13 of this part);

(v) Refer the debt to the Department of Justice to initiate litigation to collect the debt (see § 1011.16 of this part);

(vi) Refer the debt to the FMS for collection (see § 1011.9 of this part);

(7) That debts over 180 days delinquent must be referred to the FMS for the collection actions described in paragraph (a)(6) of this section (see § 1011.9 of this part);

(8) How the debtor may inspect and obtain copies of disclosable records related to the debt;

(9) How the debtor may request a review of the Presidio Trust's determination that the debtor owes a debt.

(10) How a debtor may request a hearing if the Presidio Trust intends to garnish the debtor's non-Federal wages (see § 1011.13(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see § 1011.12(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the Presidio Trust will refer the debt to the debtor's employing agency or to the FMS to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716;

(12) That the debtor may request a waiver of the debt;

(13) That the debtor's spouse may claim the spouse's share of a joint income tax refund by filing Form 8379 with the IRS;

(14) That the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That the Presidio Trust may suspend or revoke any licenses, permits, leases, privileges or services for failure to pay a debt (see § 1011.17 of this part); and

(16) That the debtor should advise the Presidio Trust of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* The Presidio Trust may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(16) of this section if the Presidio Trust, in consultation with its General Counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors.* The Presidio Trust will respond promptly to communications from debtors.

§ 1011.5 What interest, penalty charges and administrative costs will the Presidio Trust add to a debt?

(a) *Interest.* (1) The Presidio Trust will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(2) Interest begins to accrue on all debts from the date the debt becomes delinquent. The Presidio Trust will waive collection of interest on that portion of the debt that is paid within 30 days after the date on which interest begins to accrue. The Presidio Trust will assess interest at the rate established by the Treasury Department under 31 U.S.C. 3717, unless a different rate is established by a contract, repayment agreement or statute. The Presidio Trust will notify the debtor of the basis for the interest rate assessed.

(b) *Penalty.* The Presidio Trust will assess a penalty of not more than 6% a year, or such other higher rate as authorized by law, on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Presidio Trust will assess charges to cover administrative costs incurred as a result of the debtor's failure to pay a debt. The Presidio Trust will waive collection of administrative costs on that portion of the debt that is paid within 30 days after the date on which the administrative costs begin to accrue. Administrative costs include the costs of processing and handling a debt, obtaining a credit report, using a private collection contractor, costs of a hearing including, the costs of a hearing officer, and service fees charged by a Federal agency for collection activities undertaken on behalf of the Presidio Trust.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to outstanding debt principal.

(e) *Additional authority.* The Presidio Trust may have additional policies, guidelines and procedures regarding how interest, penalties and administrative costs are assessed on particular types of debts. The Presidio Trust will explain in the notice to the debtor described in ''.4 of this part how interest, penalties, administrative costs and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(f) *Waiver.* (1) The Presidio Trust may waive collection of all or part of accrued interest, penalties and administrative costs when it would be against equity and good conscience or not in the Presidio Trust's best interest to collect such charges.

(2) A decision to waive interest, penalties or administrative costs may be made at any time before a debt is paid. However, unless otherwise provided in these regulations, when these charges have been collected before the waiver decision, they will not be refunded.

(g) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). The Presidio Trust may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the Presidio Trust's best interest.

§ 1011.6 When will the Presidio Trust allow a debtor to enter into a repayment agreement?

(a) *Voluntary repayment.* In response to a notice of a debt, the debtor may propose to the Presidio Trust the voluntary repayment of the debt in lieu of the Presidio Trust taking other collection actions under this part.

(b) *Debtor's request.* The request from the debtor must:

(1) Be in writing;

(2) Admit the existence of the entire debt; and

(3) Either propose payment of the debt (together with interest, penalties and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) *Repayment schedule.* The Presidio Trust will collect debts in one lump sum whenever feasible. The Presidio Trust may accept payment in regular installments that bear a reasonable relationship to the size of the debt.

(d) *Repayment agreement.* The Presidio Trust will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Presidio Trust may request additional information from the debtor, including, without limitation, financial statements, in order to determine whether to enter into a voluntary repayment agreement. The Presidio Trust will set the necessary terms of any repayment agreement. No repayment agreement will be binding on the Presidio Trust unless it is in writing and signed by both the debtor and an authorized Presidio Trust representative. The Presidio Trust is not required to enter into a repayment agreement.

§ 1011.7 When will the Presidio Trust compromise a debt?

(a) *Authority.* The Presidio Trust may compromise a debt in accordance with the FCCS and such procedures as the Presidio Trust may adopt. (See § 1011.16 of this subpart).

(b) *Report to IRS.* The uncollected portion of a debt owed to the Presidio Trust that is not recovered as the result of a compromise will be reported to the IRS as income to the debtor in accordance with IRS and Presidio Trust procedures.

§ 1011.8 When will the Presidio Trust suspend or terminate debt collection on a debt?

If, after pursuing all appropriate means of collection, the Presidio Trust determines that a debt is uncollectible, the Presidio Trust may suspend or terminate debt collection activity in accordance with the FCCS and the Presidio Trust's procedures.

§ 1011.9 When will the Presidio Trust transfer a debt to the Financial Management Service for collection?

(a) *Cross-servicing.* The Presidio Trust will transfer any eligible debt that is more than 180 days delinquent to the FMS for debt collection services, a process known as ''cross-servicing.'' The Presidio Trust may transfer debts delinquent 180 days or less to the FMS in accordance with the procedures described in 31 CFR 285.12. The FMS takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. Appropriate action includes, without limitation, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

(b) *Notice; certification.* At least 60 days prior to transferring a debt to the FMS, the Presidio Trust will send notice to the debtor as required by § 1011.4 of this part. The Presidio Trust will certify to the FMS, in writing, that the debt is valid, delinquent, legally enforceable and that there are no legal bars to

collection. In addition, the Presidio Trust will certify its compliance with all applicable due process and other requirements as described in this part and other Federal laws.

(c) *Treasury Offset Program.* As part of its debt collection process, the FMS uses the Treasury Offset Program to collect debts by administrative and tax refund offset. The Treasury Offset Program is a centralized offset program administered by the FMS to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a federal payment is disbursed, the FMS compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the FMS (or, in some cases, another Federal disbursing agency) offsets all or a portion of the federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, without limitation, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 1011.10 How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) If not already transferred to the FMS under § 1011.9 of this part, the Presidio Trust will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. The Presidio Trust may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least 60 days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. The Presidio Trust will certify to the FMS, in writing, that the debt is valid, delinquent, legally enforceable and that there are no legal bars to collection by offset. In addition, the Presidio Trust will certify its compliance with the due process requirements under 31 U.S.C. 3716(a) and with the requirements described in this part.

(b) *Non-centralized administrative offset for a debt.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, the Presidio Trust may collect delinquent, legally enforceable debts through non-centralized administrative offset. In these cases, the Presidio Trust may offset a payment internally or make an offset request directly to a federal paying agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a federal paying agency to offset a payment, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. When referring a debt for offset under this paragraph (b), the Presidio Trust will certify, in writing, that the debt is valid, delinquent, legally enforceable and that there are no legal bars to collection by offset. In addition, the Presidio Trust will certify its compliance with the due process requirements under 31 U.S.C. 3716(a) and with these regulations concerning administrative offset.

(c) *Administrative review.* The notice described in § 1011.4 of this part will explain to the debtor how to request an administrative review of the Presidio Trust determination that the debtor owes a debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, the Presidio Trust will provide the debtor with a ''paper hearing'' based upon a review of the written record, including documentation provided by the debtor. The Presidio Trust will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Presidio Trust determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Presidio Trust will document all significant matters presented at the hearing. The Presidio Trust may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute. The Presidio Trust may establish policies, guidelines and procedures concerning the administrative review process consistent with the FCCS and the regulations in this section.

(d) *Procedures for expedited offset.* Under the circumstances described by the FCCS, the Presidio Trust may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 1011.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. The Presidio Trust will give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 1011.11 How will the Presidio Trust use tax refund offset to collect a debt?

(a) *Tax refund offset.* In most cases, the FMS uses the Treasury Offset Program to collect debts by the offset of tax refunds and other federal payments. See § 1011.9(c) of this part. If not already transferred to the FMS under § 1011.9 of this part, the Presidio Trust will refer to the Treasury Offset Program any delinquent, legally enforceable debt for collection by tax refund offset.

(b) *Notice; certification.* At least 60 days prior to referring a debt to the Treasury Offset Program, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. The Presidio Trust will certify to the FMS's Treasury Offset Program, in writing, that the debt is delinquent and legally enforceable in the amount submitted and that the Presidio Trust has made reasonable efforts to obtain payment of the debt. In addition, the Presidio Trust will certify its compliance with all applicable due process and other requirements described in this part and other applicable law.

(c) *Administrative review.* The notice described in § 1011.4 of this part will provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 1011.10(c) of this part. The Presidio Trust may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 1011.12 How will the Presidio Trust offset a Federal employee's salary to collect a debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Federal employees. If a Presidio Trust employee owes a debt, the Presidio Trust may offset the employee's federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than the Presidio Trust may collect a debt from the salary of a Presidio Trust employee, see § 1011.21 and 1011.22, subpart C, of this part.

(2) Nothing in this part requires the Presidio Trust to collect a debt in

accordance with the provisions of this section if Federal law allows otherwise.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 1011.9(a) of this part, the Presidio Trust will refer debts to the FMS for collection by administrative offset, including salary offset, through the Treasury Offset Program.

(c) *Non-centralized salary offset for Treasury debts.* The Presidio Trust may collect delinquent debts through non-centralized salary offset. In these cases, the Presidio Trust may offset a payment internally or make a request directly to a paying agency to offset a salary payment to collect a delinquent debt owed by a Federal employee. At least 30 days prior to offsetting internally or requesting a Federal agency to offset a salary payment, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. When referring a debt for offset, the Presidio Trust will certify to the paying agency, in writing, that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, the Presidio Trust will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the process for salary offset.

(d) *When prior notice not required.* The Presidio Trust is not required to provide prior notice to a Presidio Trust employee when the following adjustments are made:

(1) Any adjustment to pay arising out of a Presidio Trust employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or fewer;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures.* (1) *Request for a hearing.* A Presidio Trust employee who has received a notice that a debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 1011.4(a)(11). The request must be received by the designated office on or before the 15th business day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, the Presidio Trust may accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* The Presidio Trust hearing must be conducted by a hearing official who is not under the supervision or control of the Board of Directors of the Presidio Trust. The hearing official need not be an employee of the Federal Government.

(4) *Notice of hearing.* After the employee requests a hearing, a designated hearing official will inform the employee of the form of the hearing to be provided. For oral hearings, the notice will set forth the date, time and location of the hearing. For paper hearings, the notice will notify the employee of the date by which the employee should submit written arguments to the designated hearing official. The hearing official will give the employee reasonable time to submit documentation in support of the employee's position. The hearing official will schedule a new hearing date if requested by both parties. The hearing official will give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if the official determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing official will determine the procedure for the oral hearing, determining, for example, the hearing length.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the official will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of the employee's position.

(7) *Date of decision.* The hearing official will issue a written opinion setting forth the decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing.

(8) *Final agency action.* The hearing official's decision will be final.

(f) *Salary offset process.* (1) *Determination of disposable pay.* The Presidio Trust payroll office will determine the amount of the employee's disposable pay (as defined in § 1011.1 of this part) and will implement salary offset.

(2) *When salary offset begins.* Deductions will begin within three official pay periods.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15% of the employee's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15% of the disposable pay, such debt generally will be collected in one lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15% of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(4) *Final salary payment.* After the employee's employment with the Presidio Trust ends, the Presidio Trust may make a lump sum deduction exceeding 15% of disposable pay from any final salary or other payments in order to satisfy a debt.

§ 1011.13 How will the Presidio Trust use administrative wage garnishment to collect a debt from a debtor's wages?

(a) *Authority and process.* The Presidio Trust is authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of the FCCS and other applicable law. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment,

including the hearing procedures described therein. The Presidio Trust may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 1011.6 of this part). At least 30 days prior to initiating an administrative wage garnishment, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part, including the requirements of § 1011.4(a)(10) of this part. For debts referred to the FMS under § 1011.9 of this part, the Presidio Trust may authorize the FMS to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 1011.4(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. If a debtor's hearing request is not timely, the Presidio Trust may suspend collection by administrative wage garnishment. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) *Not applicable to federal salary offset.* This section does not apply to federal salary offset, the process by which the Presidio Trust collects debts from the salaries of Federal employees (see § 1011.12 of this part).

§ 1011.14 How will the Presidio Trust report debts to credit bureaus?

The Presidio Trust will report delinquent debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e) and the FCCS. At least 60 days prior to reporting a delinquent debt to a consumer reporting agency, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. The Presidio Trust may authorize the FMS to report to credit bureaus those delinquent debts that have been transferred to the FMS under § 1011.9 of this part.

§ 1011.15 How will the Presidio Trust refer debts to private collection contractors?

The Presidio Trust will transfer delinquent debts to the FMS to obtain debt collection services provided by private collection contractors. See § 1011.9 of this part.

§ 1011.16 When will the Presidio Trust refer debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* The Presidio Trust will refer debts having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See the FCCS and § 1011.7 and 1011.8 of this part.

(b) *Litigation.* The Presidio Trust will promptly refer to the Department of Justice for litigation delinquent debts on which aggressive collection activity has been taken in accordance with this part that the Presidio Trust determines should not be compromised, and on which collection activity should not be suspended or terminated. The Presidio Trust may authorize the FMS to refer to the Department of Justice for litigation those delinquent debts that have been transferred to the FMS under § 1011.9 of this part.

§ 1011.17 Will a debtor who owes a debt be ineligible for Presidio Trust licenses, permits, leases, privileges or services?

Unless prohibited by law, the Presidio Trust may terminate, suspend or revoke licenses, permits, leases (subject to the terms of the leases), or other privileges or services for any inexcusable or willful failure of a debtor to pay a debt. The Presidio Trust may establish guidelines and procedures governing termination, suspension and revocation for delinquent debtors. If applicable, the Presidio Trust will advise the debtor in the notice required by § 1011.4 of this part of the Presidio Trust's ability to suspend or revoke licenses, permits, leases, or privileges or services.

§ 1011.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death or disability?

(a) *Material change in circumstances.* A debtor who owes a debt may, at any time, request a special review by the Presidio Trust of the amount of any offset, administrative wage garnishment or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, without limitation, catastrophic illness, divorce, death or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation and medical care), the debtor must submit a detailed statement and supporting documents for the debtor, the debtor's, and dependents, indicating:

(1) Income from all sources;
(2) Assets;
(3) Liabilities;
(4) Number of dependents;
(5) Expenses for food, housing, clothing and transportation;
(6) Medical expenses; and
(7) Exceptional expenses, if any.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor must submit an alternative proposed payment schedule and a statement to the Presidio Trust, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Presidio Trust will evaluate the statement and documentation and determine whether the current offset, garnishment or repayment schedule imposes extreme financial hardship on the debtor. The Presidio Trust will notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment or payment schedule. If the special review results in a revised offset, garnishment or repayment schedule, the Presidio Trust will notify the appropriate agency or other persons about the new terms.

§ 1011.19 Will the Presidio Trust issue a refund if money is erroneously collected on a debt?

The Presidio Trust will promptly refund to a debtor any amount collected on a debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part will not bear interest unless required by law.

§ 1011.20 Will the Presidio Trust's failure to comply with these regulations be a defense to a debt?

No, the failure of the Presidio Trust to comply with any standard in the FCCS, these regulations or such other procedures of the Presidio Trust will not be available to any debtor as a defense.

Subpart C—Procedures for Offset of Presidio Trust Payments To Collect Debts Owed To Other Federal Agencies

§ 1011.21 How do other Federal agencies use the offset process to collect debts from payments issued by the Presidio Trust?

(a) *Offset of Presidio Trust payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by other Federal agencies, a process known as ''centralized offset.'' When centralized offset is not available or appropriate, any Federal agency may ask the Presidio Trust (when acting as a paying agency) to collect a debt owed to such agency by offsetting funds payable to a debtor by the Presidio

Trust, including salary payments issued to the Presidio Trust employees. This section and § 1011.22 of this subpart C apply when a Federal agency asks the Presidio Trust to offset a payment issued by the Presidio Trust to a person who owes a debt to the United States.

(2) This subpart C does not apply to the collection of debts through tax refund offset.

(b) *Administrative offset (including salary offset); certification.* The Presidio Trust will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the delinquent, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section must be sent to the Presidio Trust, ATTN: Chief Financial Officer, P.O. Box 29052, San Francisco, CA 94129–0052.

(d) *Incomplete certification.* The Presidio Trust will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by the Presidio Trust.

(e) *Review.* The Presidio Trust is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When the Presidio Trust will not comply with offset request.* The Presidio Trust will comply with the offset request of another agency unless the Presidio Trust determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the Presidio Trust may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to the Presidio Trust.* For purposes of this section, debts owed to the Presidio Trust generally take precedence over debts owed to other agencies. The Presidio Trust may determine whether to pay debts owed to other agencies before paying a debt owed to the Presidio Trust. The Presidio Trust will determine the order in which the debts will be collected based on the best interests of the United States.

§ 1011.22 What does the Presidio Trust do upon receipt of a request to offset the salary of a Presidio Trust employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the Presidio Trust employee.* When the Presidio Trust receives proper certification of a debt owed by one of its employees, the Presidio Trust will begin deductions from the employee's pay at the next officially established pay interval. The Presidio Trust will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed to the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from a Presidio Trust employee's salary.* The amount deducted under § 1011.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions will continue until the Presidio Trust knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. See § 1011.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Presidio Trust.* (1) *Offset of final and subsequent payments.* If the Presidio Trust employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Presidio Trust will continue to offset up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the Presidio Trust.

(2) *Notice to the creditor agency.* If the employee's employment with the Presidio Trust terminates before the debt is paid in full, the Presidio Trust will certify to the creditor agency the total amount of its collection. If the Presidio Trust is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, the Presidio Trust will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 1011.9(c) of this part.

(3) *Notice to the debtor.* The Presidio Trust will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency.* (1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, the Presidio Trust will notify the creditor agency and will certify the total amount of its collection on the debt. The Presidio Trust will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Presidio Trust will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* The Presidio Trust will provide a hearing official upon the creditor agency's request with respect to the Presidio Trust employee.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[R06–OAR–2005–OK–0003; FRL–8006–7]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; delegation of authority.

SUMMARY: The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources. These regulations apply to certain NESHAPs promulgated by

EPA, as amended through September 1, 2004. The delegation of authority under this notice applies only to sources located in Oklahoma, and does not extend to sources located in Indian country. EPA is providing notice that it is taking direct final action to approve the delegation of certain NESHAPs to ODEQ.

DATES: This rule is effective on February 13, 2006 without further notice, unless EPA receives relevant adverse comment by January 12, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–OK–0003, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/*, Regional Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Jeff Robinson at *robinson.jeffrey@epa.gov*.
- Fax: Mr. Jeff Robinson, Air Permits Section (6PD–R), at fax number 214–665–7263.
- Mail: Mr. Jeff Robinson, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Jeff Robinson, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Materials in EDocket (RME) ID No. R06–OAR–2005–OK–0003. EPA's policy is that all comments received will be included in the public file without change, change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The delegation request is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, Oklahoma City, Oklahoma 73101.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, telephone (214) 665–6435; fax number 214–665–7263; or electronic mail at *robinson.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. What Does This Notice Do?

EPA is taking direct final action to approve the delegation of certain NESHAPs to ODEQ. With this delegation, ODEQ has the primary responsibility to implement and enforce the delegated standards. See Section VI, below, for a complete discussion of which standards are being delegated and which are not being delegated.

III. What Is the Authority for Delegation?

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

IV. What Criteria Must ODEQ's Program Meet To Be Approved?

EPA previously approved ODEQ's program for the delegation of NESHAPS in 40 CFR part 61. 47 FR 17285 (April 22, 1982). EPA also previously approved ODEQ's program for the delegation of certain NESHAP standards in 40 CFR part 63. 66 FR 1584 (January 9, 2001). Section 112(l) of the CAA enables EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E (subpart E) governs EPA's approval of State rules or programs under Section 112(l).

EPA will approve an air toxics program if we find that:

(1) the State program is ''no less stringent'' than the corresponding Federal program or rule;

(2) the State has adequate authority and resources to implement the program;

(3) the schedule for implementation and compliance is sufficiently expeditious; and

(4) the program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), only the criteria of 40 CFR 63.91(d) must be met. 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d) for part 70 sources.

V. How Did ODEQ Meet the Subpart E Approval Criteria?

As part of its Title V submission, ODEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This applied to both existing and future standards as they applied to part 70 sources. 60 FR 13088–13095 (March 10, 1995), EPA approved ODEQ's program for receiving delegation of existing and future standards when it granted final interim approval to ODEQ's Title V program. 61 FR 4220–4224 (February 5, 1996). EPA granted final approval of Oklahoma's operating Title V operating permits program on November 30, 2001. 66 FR 63170–63175 (December 5, 2001). Under 40 CFR 63.91(d)(2), once a state or local air pollution agency has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals. ODEQ has final Title V program approval and has affirmed that it still meets the up-front approval criteria.

VI. What Is Being Delegated?

EPA received a request to update the NESHAP delegations on June 15, 2005. ODEQ requested the EPA to update the delegation of authority for the following:

A. NESHAPs (40 CFR Part 61 standards) through September 1, 2004; and

B. NESHAPs (40 CFR Part 63 standards) through September 1, 2004.

ODEQ's request was for delegation of certain NESHAPs for all sources (both part 70 and non-part 70 sources). The request includes revisions of OAC 252:100–41–15, as adopted by the Oklahoma Department of Environmental Quality. For the Part 61 NESHAPs, this revision included all NESHAPs promulgated by EPA as amended in the **Federal Register** through September 1, 2004, excluding Subparts B, H, I, K, Q, R, T, and W. For the Part 63 NESHAPs, this includes the NESHAPs set forth in Table 1 below. The effective date of the Federal delegation for parts 61 and 63 standards is the effective date of this rule.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO ODEQ

Subpart	Source category
A	General Provisions.
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater.
H	HON—Equipment Leaks.
I	HON—Certain Processes Negotiated Equipment Leak Regulation.
J	Polyvinyl Chloride and Copolymers Production.[1]
L	Coke Oven Batteries.
M	Perchloroethylene Dry Cleaning.
N	Chromium Electroplating and Chromium Anodizing Tanks.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO ODEQ—Continued

Subpart	Source category
U	Group I Polymers and Resins.
W	Epoxy Resins Production and Non-Nylon Polyamides Production.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
AA	Phosphoric Acid Manufacturing Plants.
BB	Phosphate Fertilizers Production Plants.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery Operations.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework Facilities.
HH	Oil and Natural Gas Production Facilities.
II	Shipbuilding and Ship Repair Facilities.
JJ	Wood Furniture Manufacturing Operations.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.
OO	Tanks—Level 1.
PP	Containers.
QQ	Surface Impoundments.
RR	Individual Drain Systems.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
TT	Equipment Leaks—Control Level 1.
UU	Equipment Leaks—Control Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
DDD	Mineral Wool Production.
EEE	Hazardous Waste Combustors.
GGG	Pharmaceuticals Production.
HHH	Natural Gas Transmission and Storage Facilities.
III	Flexible Polyurethane Foam Production.
JJJ	Group IV Polymers and Resins.
LLL	Portland Cement Manufacturing.
MMM	Pesticide Active Ingredient Production.
NNN	Wool Fiberglass Manufacturing.
OOO	Amino/Phenolic Resins.
PPP	Polyether Polyols Production.
QQQ	Primary Copper Smelting.
RRR	Secondary Aluminum Production.
TTT	Primary Lead Smelting.
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.
VVV	Publicly Owned Treatment Works (POTW).
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese.
AAAA	Municipal Solid Waste Landfills.
CCCC	Nutritional Yeast Manufacturing.
DDDD	Plywood and Composite Wood Products.
EEEE	Organic Liquid Distribution.
FFFF	Miscellaneous Organic Chemical Manufacturing.
GGGG	Solvent Extraction for Vegetable Oil Production.
HHHH	Wet Formed Fiberglass Mat Production.
IIII	Auto & Light Duty Truck.
JJJJ	Paper & Other Web Coating.
KKKK	Surface Coating of Metal Cans.
MMMM	Surface Coating of Miscellaneous Metal Parts and Products.
NNNN	Surface Coating of Large Appliances.
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles.
PPPP	Plastic Parts.
QQQQ	Surface Coating of Wood Building Products.
RRRR	Surface Coating of Metal Furniture.
SSSS	Surface Coating of Metal Coil.
TTTT	Leather Finishing Operations.
UUUU	Cellulose Production Manufacture.
VVVV	Boat Manufacturing.
WWWW	Reinforced Plastic Composites Production.
XXXX	Tire Manufacturing.
YYYY	Stationary Combustion Turbines.
ZZZZ	Reciprocating Internal Combustion Engines.
AAAAA	Lime Manufacturing Plants.
BBBBB	Semiconductor Manufacturing.
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks.
EEEEE	Iron and Steel Foundries.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO ODEQ—Continued

Subpart	Source category
FFFFF	Integrated Iron and Steel.
GGGGG	Site Remediation.
HHHHH	Miscellaneous Coating Manufacturing.
IIIII	Mercury Cell Chlor-Alkali Plants.
JJJJJ	Brick and Structural Clay Products.
KKKKK	Clay Ceramics Manufacturing.
LLLLL	Asphalt Roofing and Processing.
MMMMM	Flexible Polyurethane Foam Fabrication Operation.
NNNNN	Hydrochloric Acid Production.
PPPPP	Engine Test Cells/Stands.
QQQQQ	Friction Products Manufacturing.
RRRRR	Taconite Iron Ore Processing.
SSSSS	Refractory Products Manufacturing.
TTTTT	Primary Magnesium Refining.

[1] The ODEQ has adopted the subpart unchanged and applied for delegation of the standard. The standard was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network* v. *EPA*, 370 F. 3d 1232 (DC Cir. 2004). Because of the DC Circuit Court's holding this standard is not being delegated to ODEQ at this time.

VII. What Is Not Being Delegated?

As mentioned above, ODEQ has not been delegated the authority for the following standards:

40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters);

40 CFR Part 60, Subpart WWW, (Standards of Performance for Municipal Solid Waste Landfills);

40 CFR Part 60, Subpart Cc, (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills);

40 CFR Part 61, Subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);

40 CFR Part 61, Subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);

40 CFR Part 61, Subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);

40 CFR Part 61, Subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);

40 CFR Part 61, Subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);

40 CFR Part 61, Subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);

40 CFR Part 61, Subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and

40 CFR Part 61, Subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some MACT standards have certain provisions that cannot be delegated to the States (e.g. 40 CFR 63.106(b)). Therefore, any MACT standard that EPA is delegating to ODEQ that provides that certain authorities cannot be delegated are retained by EPA and not delegated. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA Section 112. Finally, Section 112(r), the accidental release program authority, is not being delegated by this approval.

All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Oklahoma should be directed to the EPA Region 6 Office.

This delegation to ODEQ to implement and enforce certain NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because ODEQ has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.[2]

VIII. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, ODEQ will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

IX. What Authority Does EPA Have?

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under Section 112. EPA

[2] The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 includes a provision relating to Oklahoma and EPA programs, providing:

Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the ''Administrator'') determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

H.R. 3, Section 10211(a). Oklahoma has not applied to administer the NESHAPS program in Indian country in accordance with this statute.

also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting ODEQ some of these authorities, and retaining others, as explained in Sections VI and VII above. In addition, EPA may review and disapprove of State determinations and subsequently require corrections. (See 40 CFR 63.91(g) and 65 FR 55810, 55823, September 14, 2000.)

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

X. What Information Must ODEQ Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require ODEQ to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. ODEQ must enter this information into the AIRS system and update the information by September 30 of every year. ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a).

In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For part 63 standards, these determinations include: Applicability determinations (§ 63.1); approval/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); notifications regarding the use of a continuous opacity monitoring system (§ 63.6(h)(7)(ii)); finding of compliance (§ 63.6(h)(8)); approval/disapprovals of compliance extensions (§ 63.6(i)); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii) and (f)) alternative test methods; approval of shorter sampling times and volumes (§ 63.7(e)(2)(iii)); waiver of performance testing (§ 63.7(e)(2)(iv) and (h)(2), (3)); approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); approval of adjustments to time periods for submitting reports (§§ 63.9 and 63.10); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)).

Additionally, EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see 40 CFR 63.90). The ODEQ should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

XI. What Is EPA's Oversight of This Delegation to ODEQ?

EPA must oversee ODEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient.

XII. Should Sources Submit Notices to EPA or ODEQ?

All of the information required pursuant to the Federal NESHAP (40 CFR parts 61 and 63) should be submitted by sources located outside of Indian country directly to the ODEQ at the following address: Oklahoma Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101–1677. The ODEQ is the primary point of contact with respect to delegated NESHAPs in Oklahoma (excluding Indian country). Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ODEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

XIII. How Will Unchanged Authorities Be Delegated to ODEQ in the Future?

In the future, ODEQ will only need to send a letter of request to EPA, Region 6, for those NSPS and NESHAP regulations that ODEQ has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** notice will be published to inform the public and affected sources of the delegation, indicating where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to ODEQ.

XIV. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of Section 112 standards, as applied to part 70 sources, on March 10, 1995. The proposal was part of EPA's proposed approval of the Oklahoma Department of Environmental Quality's operating permits program. 60 FR 13088. The EPA did not receive adverse public comments on the proposed delegation of Section 112 standards. 61 FR 4220 (February 5, 1996). In this action, the public is given the opportunity to comment on the approval of ODEQ's request for delegation of authority to implement and enforce certain Section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference into Oklahoma's state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective February 13, 2006 without further notice unless the Agency receives relevant adverse comments by January 12, 2006.

If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not

institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

XVI. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735 (October 4, 1993)). This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments in the aggregate, or on the private sector, in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments in accordance with section 203 of UMRA.

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, (November 9, 2000)). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, (August 10, 1999)). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, (April 23, 1997)). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it approves a state program.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272 note) requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7412.

Dated: November 29, 2005.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

■ 40 CFR parts 61 and 63 are amended as follows:

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 61.04 is amended by:
■ A. Revising paragraph (b)(LL) introductory text; and
■ B. Revising paragraph (c)(6)(iv) and reserving paragraph (c)(6)(v) to read as follows:

§ 61.04 Address.

(b) * * *

(LL) State of Oklahoma, Oklahoma Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101–1677. For a list of delegated standards for Oklahoma (excluding Indian country), see paragraph (c)(6) of this section.

* * * * *

(c) * * *

(6) * * *

* * * * *

(iv) The Oklahoma Department of Environmental Quality has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2004. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

[Excluding Indian Country] [1]

Subpart	Source category	ODEQ
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved)	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z–AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC–EE	(Reserved)	
FF	Benzene Waste Operations	X

[1] Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

(v) [Reserved.]

* * * * *

PART 63—[AMENDED]

■ The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraph (a)(36)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(36) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Oklahoma Department of Environmental Quality for all sources. The ''X'' symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA

[Excluding Indian Country]

Subpart	Source category	Order [1] [2]
A	General Provisions [2]	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	([3])
K	(Reserved)	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills	X
NN	(Reserved)	
OO	Tanks—Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil-Water Separators and Organic-Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	(Reserved)	
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ-BBB	(Reserved)	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA—Continued

[Excluding Indian Country]

Subpart	Source category	Order [1] [2]
CCCC	Nutritional Yeast Manufacturing	X
DDDD	Plywood and Composite Wood Products	X
EEEE	Organic Liquids Distribution	X
FFFF	Miscellaneous Organic Chemical Production and Processes (MON)	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
IIII	Auto & Light Duty Truck	X
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Metal Can (Surface Coating)	X
MMMM	Surface Coating of Miscellaneous Metal Parts and Products	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Plastic Parts (Surface Coating)	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Tire Manufacturing	X
YYYY	Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X
AAAAA	Lime Manufacturing Plants	X
BBBBB	Semiconductor Manufacturing	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
DDDDD	Industrial/Commerical/Institutional Boilers and Process Heaters	.....
EEEEE	Iron Foundries	X
FFFFF	Integrated Iron and Steel	X
GGGGG	Site Remediation	X
HHHHH	Miscellaneous Coating Manufacturing	X
IIIII	Mercury Cell Chlor-Alkali Plants	X
JJJJJ	Brick and Structural Clay Products Manufacturing	X
KKKKK	Clay Ceramics Manufacturing	X
LLLLL	Asphalt Roofing and Processing	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X
PPPPP	Engine Test Facilities	X
QQQQQ	Friction Products Manufacturing	X
RRRRR	Taconite Iron Ore Processing	X
SSSSS	Refractory Products Manufacture	X
TTTTT	Primary Magnesium Refining	X

[1] Program delegated to Oklahoma Department of Environmental Quality (ODEQ), as amended in the **Federal Register** through September 1, 2004.

[2] Authorities that cannot be delegated include § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

[3] The ODEQ has adopted the subpart unchanged and applied for delegation of the standard. The standard was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network* v. *EPA*, 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Circuit Court's holding this standard is not being delegated to ODEQ at this time.

[FR Doc. 05–23970 Filed 12–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–8007–9]

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: Final rule.

SUMMARY: With this action EPA is authorizing the use of 610,665 kilograms of methyl bromide for supplemental critical uses in 2005 through the allocation of additional critical stock allowances (CSAs). This allocation supplements the critical use allowances (CUAs) and CSAs previously allocated for 2005, as published in the **Federal Register** on December 23, 2004 (69 FR 76982). Further, EPA is amending the existing list of exempted critical uses to add uses authorized by the Parties to the Montreal Protocol at their Sixteenth Meeting in November 2004. Today's

action is authorized under the Clean Air Act (CAA or the Act) and is in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).

DATES: Effective Date: This final rule is effective on December 9, 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. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9246; fax number: (202) 343–2338; *finman.hodayah@epa.gov.* You may also visit the EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This action concerns regulation of methyl bromide, a class I, Group VI ozone-depleting substance. Under the Clean Air Act, as amended in 1990 and 1998, methyl bromide production and consumption (defined as production plus imports minus exports) were phased out on January 1, 2005, apart from certain exemptions, including the critical use exemption which is the subject of today's rule. In a final rule published December 23, 2004 (69 FR 76982), EPA established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet approved critical uses. As part of that rule, EPA issued critical use allowances (CUAs) for new production and import and critical stock allowances (CSAs) for sale of methyl bromide stocks.

On August 30, 2005, EPA issued a direct final rule and parallel proposal to add additional uses of methyl bromide to the list of approved critical uses and to issue additional CSAs for the 2005 control period (70 FR 51270). These actions were taken to reflect a decision by the Parties to the Montreal Protocol at their sixteenth meeting to authorize supplemental critical uses and amounts. Due to the receipt of adverse comment, EPA withdrew the direct final rule, and it did not go into effect (70 FR 60443). Today EPA is taking final action based on the August 30, 2005 proposal. Today's final action is in accordance with Decision XVI/2 taken by the Montreal Protocol Parties at their November 2004 meeting and with prior decisions of the parties on critical uses.

Section 533(d) of the Administrative Procedure Act (APA), 5 U.S.C., Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. Today's final rule is issued under section 307(d) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective on December 9, 2005. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Today's final rule grants an exemption from the phaseout of methyl bromide. Because the allowances issued through this action will expire at the end of 2005, EPA is making this rule effective immediately to provide allowance holders an opportunity to expend the allowances before they expire.

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I. Background on the Montreal Protocol and the Critical Use Exemption

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is an international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone depleting substances (ODS).[1] The elimination of production and consumption of ODSs is accomplished through adherence to phase-out schedules for specific class I ODSs [2], including: chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. The Clean Air Act, as amended in 1990 and 1998, requires EPA to promulgate regulations implementing the Protocol's phaseout schedules in the United States. Those regulations are codified at 40 CFR Part 82. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States. Production and import of methyl bromide were phased out in those countries as of January 1, 2005. However, the Protocol provides exemptions that allow for the continued import and/or production of ODSs, including methyl bromide.

Methyl bromide was added to the Protocol as an ODS in 1992 through the Copenhagen amendment to the Protocol. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or improted prior to the 1996 phase out may be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are listed at 40 CFR Part 82 subpart A, appendix A.

bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur (58 FR 65018).

The 2001 phaseout date was established in response to a petition filed in 1991 under sections 602 (c)(3) and 606 (b) of the Clean Air Act Amendments (CAAA) of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly-listed class I ODSs provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol at their 1992 Meeting in Copenhagen to freeze the level of methyl bromide production and consumption for industrialized countries.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries along with certain allowable exemptions such as the critical use exemption. At the time the Parties adopted this phasedown schedule for methyl bromide, the U.S. continued to have a 2001 phaseout date in accordance with the language of the 1990 CAAA. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005; to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol; and to authorize EPA to provide exemptions for critical uses. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule in the **Federal Register** that established the framework for the critical use exemption, set forth a list of approved critical uses for 2005, and specified the amount of methyl bromide that could be supplied in 2005 from available stocks and new production or import to meet approved critical uses. Today, EPA is authorizing sale of additional amounts of methyl bromide from inventory for critical uses in the 2005 control period. In addition, EPA is amending the existing list of approved critical uses to add uses authorized by the Parties at their sixteenth meeting in Prague under Decision XVI/2.

In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decision IX/6, which set forth criteria for review of proposed critical uses; Decision Ex. I/3, which addressed agreed critical uses, critical-use exemption levels, and allowable levels of new production and consumption for critical uses in 2005; and Decision XVI/2, which, in part, supplements the critical use categories and exemption levels discussed in Decision Ex. I/3.

For a discussion of the relationship between the relevant provisions of the CAA, as amended in 1990 and 1998, and Article 2H of the Protocol, and the extent to which EPA takes into account Decisions of the Parties that interpret Article 2H, refer to the December 23, 2004, final rule (69 FR 76984–76985). Briefly, EPA regards certain provisions of Decisions IX/6, Ex. I/3, and XVI/2 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. In today's action, EPA is following the terms of these Decisions. This will ensure consistency with the Montreal Protocol, 42 U.S.C. 7671c(d)(6).

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority and by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide and therefore subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this final rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in today's action are intended only to implement the critical use exemption under the CAA.

II. Background on the Critical Use Exemption Process

Starting in 2002, EPA began informing applicants of the availability of an application process for a critical use exemption to the methyl bromide phaseout. The Agency published a notice in the **Federal Register** (68 FR 24737) announcing the deadline to apply, and directing applicants to announcements posted on EPA's methyl bromide Web site at *http://www.epa.gov/ozone/mbr*. On May 8, 2003 (68 FR 24737), EPA published a notice in the **Federal Register** announcing the August 6, 2003, deadline for applications for 2005. Applicants were told they may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (i.e. specific conditions which establish a critical need for methyl bromide). This process has been repeated annually since 2002.

In response to the yearly requests for critical use exemption applications published in the **Federal Register,** applicants have provided information supporting their position that they have no technically and economically feasible alternatives to methyl bromide available to them. Applicants for the exemption have submitted information on their use of methyl bromide, on research into the use of alternatives to methyl bromide, on efforts to minimize use of methyl bromide and efforts to reduce emissions and on the specific technical and economic research results of testing alternatives to methyl bromide.

The CAA, as amended in 1990 and 1998, allows the Agency to create an exemption for critical uses to the extent consistent with the Protocol. The critical use exemption process is designed to meet the needs of methyl bromide users who do not have technically and economically feasible alternatives available. EPA's December 23, 2004, final rule describing the

operational framework for the critical use exemption (69 FR 76982) established the majority of critical uses for the 2005 calendar year. In today's action, EPA is establishing supplemental critical uses available in the U.S. for the 2005 calendar year.

A detailed explanation of the development of the nomination, including the criteria used by expert reviewers, is available in a memo titled ''2003 Nomination Process: Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide from the United States of America'' on E-Docket OAR–2003–0230 (document 104) and E-Docket OAR–2004–0506. The process described in this memo applies equally to the 2004 nomination process. The 2004 nomination included the supplemental request for 2005 critical uses which are the subject of today's action.

All critical use exemption applications, including those described in the supplemental request for 2005, underwent a rigorous review by highly qualified technical experts. The CUE applications (except to the extent claimed confidential) are available on E-Docket OAR–2004–0506. Data from the applications served as the basis for the nomination and was augmented by multiple other sources, including but not limited to the National Agricultural Statistics Service of the U.S. Department of Agriculture, the State of California Department of Pesticide Regulation, peer-reviewed articles, and crop budgets.

After submission of the first U.S. Nomination for a Critical Use Exemption for Methyl Bromide, in February 2003, the U.S. Government decided to request additional critical uses for 2005 in the second nomination sent to the Ozone Secretariat in February 2004. The U.S. decided to do so, in part, because certain sectors were not able to apply for an exemption in time for the 2003 nomination.

With the second nomination submitted to the Ozone Secretariat in February 2004, most of which referred to uses for the 2006 control period, the U.S. Government included some limited supplemental requests for 2005. These requests may be found in Appendix B of each chapter of the U.S. nomination and are available on E-docket OAR–2004–0506 and *http://www.epa.gov/mbr/nomination_2006.html*.

The U.S. originally nominated the following applicants for supplemental 2005 consideration: California Cut Flower Commission, National Country Ham Association, Wayco Ham Company, California Date Commission, California Strawberry Commission, California Tomato Commission, National Pest Management Association, Michigan Pepper Growers, Michigan Eggplant Growers, Burley & Dark Tobacco USA—transplant trays, Burley & Dark Tobacco USA—field grown, Virginia Tobacco Growers—transplant trays, Michigan Herbaceous Perennials, Ozark Country Hams, Nahunta Pork Center and, American Association of Meat Processors. Subsequent to the submission of the supplemental nomination, all of the tobacco applicants withdrew their CUE requests for the 2005 control period and beyond. In addition, the U.S. requested correction to the amounts for two other sectors.

The Ozone Secretariat referred the U.S. nomination to the Technical and Economic Assessment Panel (TEAP) and its subsidiary body, the Methyl Bromide Technical Options Committee (MBTOC) for review. The TEAP and the MBTOC reviewed the nominations, asked clarifying questions of the U.S. Government, and provided recommendations on the requested exemptions to the Parties to the Montreal Protocol for their consideration at the Sixteenth Meeting of the Parties.

In June 2004, the MBTOC sent questions to the U.S. Government concerning technical and economic issues in the nomination. These questions, as well as the U.S. Government's response, can be accessed on E-docket OAR–2004–0506. The U.S. Government's response was transmitted on August 13, 2005. When responding to these questions, the U.S. Government explained that critical use exemptions were being sought only in areas with moderate-to-severe pest pressure, where the use of alternatives would result in substantial yield losses, or where regulatory restrictions or geophysical conditions prohibit the adoption of alternatives. There were questions on all of the sectors described in today's action; however, many questions focused on alternatives in the overall sector instead of the specific supplemental requested amount.

In October, 2004, the MBTOC and the TEAP issued a final report on critical use nominations for methyl bromide. This report, issued by the United Nations Environment Programme (UNEP) and TEAP, is titled ''Critical Use Nominations for Methyl Bromide: Final Report'' and can be accessed at *http://www.unep.ch/ozone/teap/Reports/MBTOC* or on E-docket OAR–2004–0506. In Annex I of the report, the advisory bodies recommended an additional 584,093 kilograms of methyl bromide for U.S. critical uses in 2005. The additional kilograms were recommended for the following sectors: dried fruit and nuts (dates); dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant; ornamentals; peppers; smokehouse ham; strawberry fruit; and tomatoes.

Based on the recommendations from the advisory bodies, the Parties authorized 610,655 kilograms of methyl bromide for 2005 supplemental uses in the U.S., in Decision XVI/2. The authorization adds 26,562 kilograms to the TEAP recommendation by restoring the full amount of the U.S. request for dry commodities/structures (cocoa beans). The Parties approved the above-mentioned uses referenced in the MBTOC/TEAP report.

More information on each of the nominated sectors, including calculations of production losses and other technical data, can be found in the annual nomination on E-docket OAR–2004–0506.

I. Today's Action

With today's action, EPA has determined that an additional 610,665 kg of methyl bromide are required to satisfy critical uses for the 2005. EPA is allocating an additional 610,665 critical stock allowances (CSAs) to companies that hold pre-phaseout inventories of methyl bromide. These allowances, consistent with the CUE framework rule published on December 23, 2004, allow the holder to sell pre-phaseout inventories of methyl bromide to critical uses. In addition, with today's action, EPA is amending the list of approved critical uses found at 40 CFR 82 appendix L to include new critical uses authorized by the Parties at their sixteenth meeting in November 2004.

Consistent with the framework for the critical use exemption established in the December rulemaking, each CSA is equivalent to one kilogram of methyl bromide and all allowances expire at the end of the control period. Therefore, the supplemental allowances allocated in today's rule expire at the end of 2005.

The methodology for calculating the amount of CSAs allocated to each entity is explained in a memorandum titled ''CSA Description Memo,'' available on E-docket OAR–2004–0506. In summary, EPA has used its authority under Section 114 of the CAA to require that certain regulated entities provide the Agency with information about their holdings of methyl bromide.

EPA is allocating CSAs in this rule on a pro-rated basis, calculated as an average of the entities' December 31, 2003, and August 25, 2004, holdings of

pre-phaseout methyl bromide. This same baseline was also used to calculate CSAs in the framework rule (69 FR 76982). However, EPA notes that due to a slight baseline reporting error, one entity was granted fewer CSAs in the December 2004 framework rule than it would have been allocated had this reporting error not occurred because its relative share of the entire stockpile was underreported. The entity has since clarified the data submitted to EPA. Based on the new data, EPA was able to correctly apportion the ownership of the total stockpile to each company to reflect actual holdings of methyl bromide as of an average of the December 31, 2003, and August 25, 2004, data. Therefore, EPA is granting this entity sufficient CSAs from the 610,665-kg supplemental amount to make up the quantity of CSAs it would have received had the data been reported correctly, and is distributing the remaining allowances using the baselines as previously established but reflecting the correct percentage ownership of the total stockpile.

EPA is allocating CSAs to the following companies for the 2005 supplemental authorized amounts of critical use methyl bromide.

Company

Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corporation
Harvey Fertilizer and Gas
Helena Chemical Co.
Hendrix and Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corporation
ProSource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical, Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation

TOTAL 610,665 KILOGRAMS

EPA has determined that the individual holdings of methyl bromide stocks are Confidential Business Information (CBI). Therefore, individual baseline data and individual company allocations of CSAs are only available in the confidential portion of the docket for this rulemaking and do not appear in this **Federal Register** document. EPA has determined that the aggregate stock information is not CBI but is currently withholding that information due to the filing of complaints seeking to enjoin the Agency from its release.

EPA received comments on the previously published direct final and concurrent proposed rule from four entities. EPA received one comment requesting the Agency to finalize the rule before October 31, 2005, because even though the supplemental critical uses and amounts will not be available until close to the end of the control period, it is better to have them late in the year than not at all. EPA understands the concerns of the regulated community and is making every effort to publish the final rule expeditiously.

One commenter suggested that EPA must account for language in Decision Ex. II/1 in making critical uses available in 2005. Decision Ex. II/1 refers to critical uses for the year 2006. EPA addressed language in the Decision the notice of proposed rulemaking for 2006 critical uses (70 FR 62030), published on October 27, 2005.

This commenter further questioned the process the Agency has established to make critical uses available in the U.S. and contested EPA's interpretation of decisions related to the critical use exemption. The commenter referred repeatedly to Decision IX/6, paragraph 1(b), which states in part that ''production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * [a]ll technically and economically feasible steps have been taken to minimize the critical use and any associated emissions.'' The commenter referred to additional Decisions in stating what it believes EPA should consider ''in deciding how much new production and importation to allow after 2004.'' EPA's interpretation of the cited Decisions differs from the commenter's. However, EPA is not responding in detail to these comments because they are not relevant to today's action. EPA is not authorizing any additional production or import in this final rule; it is only authorizing the sale of additional amounts of methyl bromide from pre-phaseout inventories.

In addition, EPA has already responded to many of the points raised by the commenter. In particular, the commenter does not agree with EPA's accounting of stocks, evaluation of the amount of methyl bromide needed to meet critical uses, levels of critical use, and the ability of users to access non-critical-use methyl bromide for non-critical uses. The commenter raised substantially the same issues in its comments on the CUE framework rule proposed on August 25, 2004, and finalized on December 23, 2004 (69 FR 76982). EPA addressed these comments as part of that rulemaking and refers the public to E-docket OAR–2003–0230 to view specific responses to those comments contained in the response to comment document for the framework rule. These issues are further addressed in briefs filed in *NRDC* v. *EPA*, D.C. Cir No. 04–1438, which have also been placed in E-docket OAR–2004–0506.

The supplemental critical use amount that we are authorizing today, in the form of additional critical stock allowances, is based on the information described in this notice and in the August 30, 2005, notice of proposed rulemaking. This includes information received from applicants as well as other data sources noted above. The approach to assessing critical need discussed in the December 23, 2004 framework rule and in the response to comments document for the framework rule was used for this supplemental amount. Those documents also explain the limitations of the 2003 use estimate to which the commenter refers.

The commenter further stated that EPA should not establish additional uses as ''critical'' because the Agency did not find, pursuant to Decision IX/6, paragraph 1(a), that the lack of methyl bromide for those uses ''would result in a significant market disruption.'' However, the Agency did make such a finding, as noted in the preamble to the direct final rule on August 30, 2005 (70 FR 51277). In addition, EPA's interpretation of the phrase ''significant market disruption'' appears in the memorandum entitled ''2003 Nomination Process: Development of 2003 Nomination for a Critical use Exemption for Methyl Bromide from the United States of America'' which appears in docket OAR–2004–0506 and was referenced at 70 FR 51274. As previously noted, that memorandum applied equally to the supplemental request for 2005. Specific discussions of the economic feasibility of alternatives for each of the uses addressed in today's action appear in the corresponding chapters of the 2004 U.S. Nomination, available on E-docket OAR–2004–0506.

The commenter states that a ''significant market disruption'' refers to ''a decrease or delay in supply or increase in price of a commodity produced with methyl bromide.'' EPA understands the commenter to suggest that market disruption is a disruption

where consumers are unable to obtain a commodity, are delayed in obtaining a commodity, or must pay more for that commodity. EPA does not disagree with the commenter that the outcome described by the commenter could constitute a significant market disruption. However, in the aforementioned memorandum available in E-docket OAR–2004–0506, EPA outlined additional circumstances which could result in a significant market disruption. EPA stated that ''markets are partially defined by the interaction between supply and demand, which determines the price and quantity of a good traded in a market. EPA's position is that a disruption to either side of a commodity market, demand or supply, would result in market disruption.'' Therefore, a significant market disruption could be experienced on the demand side, as explained by the commenter, or on the supply side, should agricultural producers be economically harmed as a result of the loss of methyl bromide. For example, if the loss of methyl bromide in strawberry production would mean that no strawberry farmers in the U.S. would be able to continue to produce this crop, the EPA would likely find that such a situation constitutes a significant market disruption even if consumers could still buy supplies of strawberries from Central and South America.

Lastly, the commenter has filed a Freedom of Information Act (FOIA) request as part of its comment submission for data on 2004 levels of methyl bromide use. EPA is responding to this FOIA request through the standard Agency process.

As described in the direct final rule (70 FR 51276), EPA is finalizing an amendment to the reporting and recordkeeping requirements at 40 CFR 82.13 to require that entities report the amount of pre-phaseout methyl bromide inventory, held for sale or transfer to another entity, to the Agency on an annual basis. Entities will be required to differentiate between the amounts owned by them and those owned by other entities. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories. The Agency did not receive any comments on this amendment to the reporting requirements.

For the reasons stated in the direct final rule, EPA is authorizing the sale of additional amounts of methyl bromide for critical uses from pre-phaseout inventories and is not authorizing new production or import. In the December 23, 2004, framework rule, EPA allocated 1,283,214 CSAs to satisfy critical uses. Consistent with the framework established in the framework rule and with Decisions Ex. I/3 and XVI/2, EPA is allocating an additional 610,665 CSAs in today's rule.

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed to add the following uses to the list of approved critical uses for 2005: Dried fruit and nuts; eggplant, field; peppers, field; tomato, field; dry commodities—structures (cocoa); dry commodities—processed foods, herbs, spices, dried milk; ornamentals; smokehouse ham; strawberry fruit. Some of these uses, such as strawberry fruit, were previously authorized by the Parties in Decision Ex. I/3, however, in Decision XVI/2 the Parties allowed for new portions of the strawberry fruit industry to qualify for the critical use exemption. Other uses, such as herbs, spices, and dried milk, are new categories of critical use altogether.

EPA has determined that the uses identified in Decision XVI/2 are critical uses and is amending Appendix L to 40 CFR Part 82 to reflect the new uses, locations of use, and limiting critical conditions. The August 30, 2005, **Federal Register** notice contained summaries of the technical and or economic basis for the Agency's proposed determination that these uses are critical uses. More extensive discussions of the technical and economic basis can be found in the U.S. Government's 2004 nomination and responses to questions from MBTOC. In instances where the Agency believes the circumstances of the use have changed—for example, the registration of a new alternative—EPA would also take such developments into account in developing a proposed determination on critical uses.

EPA solicited comments from the public on the proposed critical use determination and did not receive any comments that a change in circumstance has occurred in a particular critical use category. In addition, the Agency did not receive any comments on the technical and economic evaluation that led to EPA's critical use determination. Therefore, EPA does not have new information which leads the Agency to conclude that the proposed determination reached by the Agency in the August 30, 2005, **Federal Register** notice should be altered.

EPA did receive one comment that states that there are ''no critical uses'' for methyl bromide. The CAA does allow for critical uses and EPA has used the criteria in Decision IX/6—which include such factors as the lack of technically and economically feasible alternatives—to assess whether a given use qualifies as critical. The Agency, through the nomination process, established that certain uses met these criteria. The commenter did not provide any technical data to substantiate a claim that there are ''no critical uses'' based on the availability of alternatives, thus the Agency is not changing its proposed determination.

Another commenter stated that methyl bromide can cause acute health problems and that her family may be suffering from methyl bromide exposure. Statutory authority to address issues of exposure and health effects lies under FIFRA and other programs run by pesticide licensing agencies at the Federal, State, and local level. The commenter further states that there are alternatives to methyl bromide and that an exemption is therefore not necessary.

EPA does not dispute that there are alternatives to methyl bromide for many uses of this fumigant. However, in some cases the alternative may not be registered or otherwise available for use; in other instances, the alternative may not be technically feasible under certain circumstances; last, an alternative may not be economically feasible for certain uses. EPA conducts a detailed analysis of these and other factors to determine whether a particular use should be designated a critical use. The uses proposed by the agency in the August 30, 2005, notice are uses that EPA believes, based on extensive analysis, do not have feasible alternatives in the circumstances of the use. EPA solicited comments on the specific proposed uses and did not receive any information that would change this technical analysis.

Therefore, in today's action, EPA is finalizing the proposed amendments to Appendix L of 40 CFR Part 82 and adding several new uses to the list of approved critical uses for 2005 as follows:

Amendments to 40 CFR Part 82, Subpart A, Appendix L

The following table shows the additions to Appendix L of 40 CFR Part 82, Subpart A.

Column A	Column B	Column C
Approved Critical Uses.	Approved Critical User and Location of Use.	Limiting Critical Conditions.
	Pre-plant uses	
Eggplant	Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Ornamentals (Cut flowers).	California Cut Flower Commission and Florida growers.	With a reasonable expectation that moderate to severe pest pressure either already exists or could occur without methyl bromide fumigation, or with reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Peppers (field)	Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Strawberry fruit	California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative, hilly terrain that prevents the distribution of alternative.
Tomatoes	California growers in San Diego and Ventura Counties.	With a reasonable expectation that moderate to severe pest pressure either already exists or could occur or where alternatives are ineffective because of hilly terrain.
	Post-harvest uses	
Food processing	Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk).	With reasonable expectation that one or more of the following limiting critical conditions exists: Older facilities that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, or where heat treatment would cause rancidity to commodities, time to transition to an alternative.
Dried Fruit and Nuts (dates only).	Growers and packers who are members of the California Date Commission, whose facilities are located only in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: Rapid fumigation is required to meet a critical market window such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.
Dry Cured Pork Products.	(A) Members of the National Country Ham Association.	Pork products facilities owned by companies that are members of the Association.
	(B) Members of the American Association of Meat Processors.	Pork product facilities owned by companies that are members of the Association.
	(C) Nahunta Pork Center (North Carolina).	

Lastly, in today's rule EPA is finalizing a clarification to 40 CFR 82.4(p)(2) proposed in the August 30, 2005, notice (70 FR 51270). In the CUE rule published on December 23, 2004 (69 FR 76982), EPA created a prohibition as follows. Paragraph (p)(2)(vi) states that, with some exceptions: ''No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period.'' However, EPA did not intend this prohibition to prevent end users who have been using non-critical use methyl bromide during the first part of 2005 from using critical use methyl bromide on the same field or structure for the same use if they became approved critical users as a result of this supplemental rulemaking. Such a result would deprive those end users of the benefit of the exemption solely as a result of the timing of the rule. Thus, EPA is adding the following exception to paragraph (p)(2)(vi): ''or unless, subsequent to that person's use of the non-critical use methyl bromide, that person * * * (b) becomes an approved critical user as a result of rulemaking.'' EPA is also making a corresponding change to § 82.13, paragraph (2)(dd), which describes the self-certification process for approved critical users: ''* * * I am aware that any agricultural commodity within a treatment chamber, facility, or field I fumigate with critical use methyl bromide cannot subsequently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use * * * unless a local township cap limit now prevents me from using methyl bromide alternatives, or I have now become an approved critical user as a result of rulemaking.''

EPA received one comment on this clarification. The commenter stated that he did not support the approach outlined above because it would allow for ''double dipping'' and he was concerned that critical users would be allowed to use more methyl bromide than is set forth in Decisions Ex 1/3 and XVI/2. EPA disagrees with the commenter's assumptions and notes that the comment inappropriately focuses on ''users'' as opposed to ''uses.'' Under the framework rule, EPA established a system where there are two types of use: critical uses and non-critical uses. A single entity may have both critical and non-critical uses. For example, a particular walnut producer

may have some silos that require rapid fumigation (a limiting critical condition) and therefore have a critical need for methyl bromide, and other silos that do not require rapid fumigation and whose fumigation therefore does not qualify as a critical use. In addition, an entity may become subject to a prohibition on the use of methyl bromide alternatives due to the reaching of a local township limit, as provided in Appendix L, Column C. There would then be a critical need for methyl bromide later in the year that did not occur at the onset of the year. As a result, a use that was formerly non-critical may become critical. Because a single entity may have both non-critical and critical uses and because circumstances of use may change throughout the year causing the same site to either be critical or non-critical within the same control period, EPA created a framework that controls not the user but rather the individual use.

The commenter contends that if a user can have both non-critical and critical uses that more methyl bromide could be used in the U.S. than is set forth in the decisions on critical uses. However, the critical use exemption level contained in the decisions applies to critical uses only; use of methyl bromide for non-critical uses does not count against this cap. In addition, there is no corresponding cap on use of methyl bromide by non-critical uses. In the U.S., use of methyl bromide for critical uses is limited through an allowance system that limits the supply of methyl bromide for these uses. Therefore, methyl bromide use for critical uses will not exceed the critical use exemption level.

The commenter states that non-critical uses should not have any access to methyl bromide whatsoever. EPA understands that the commenter disagrees with EPA's approach of allowing non-critical users to have access to methyl bromide after 2005, which is a separate issue and one that the Agency previously addressed in the framework rule. The Agency has not typically banned the use of Class I ozone-depleting substances at the same time as production and import but rather has allowed use of these substances to decline gradually over a period of time as the supply diminishes. This approach was taken, for example, in the phaseout of chlorofluorocarbons (CFCs) and halons, two powerful ozone depleting substances. A period of continued use of previously produced or imported quantities generally helps to ensure a smooth transition to alternatives. This same approach has been taken by the Agency in the phaseout of methyl bromide, with one narrow exception: a partial restriction on access to stocks for critical uses as a condition of new production. The issue of not affecting a ban on all non-exempt uses has been addressed by the Agency in the framework rule and briefs filed by the government in *NRDC* vs. *EPA*, D.C. Cir No. 04–1438. EPA refers the public to the response to comment document for the framework rule and the briefs that are available in E-docket OAR–2004–0560.

Fumigations may already have occurred in 2005 for uses that today's final rule are determining, for the first time, to be critical. In fact, since the control period is close to ending, that is the likely case. At the time the fumigations occurred, however, the uses did not qualify as approved critical uses, and thus any methyl bromide used in those fumigations did not count against the total critical use exemption level. As of December 9, 2005 these uses may now qualify for the critical use exemption. Based on the architecture of the exemption program as set forth in the framework rule, these uses are no different, for example, than uses that may be non-critical at one point during the control period and critical at a later point due to reaching of a local township cap on the use of methyl bromide alternatives. Therefore, EPA is treating these uses consistently with the Agency's treatment under 40 CFR 82.4(p)(2)(vi) of uses affected by the reaching of a local township cap. Again, the question of whether non-critical uses should be able to use methyl bromide after the date when the U.S. was obligated to cease production and import of the chemical is a separate issue and one previously addressed in the framework rule.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions will be documented in the public record.

This final action will likely have a minor cost savings associated with its implementation, but the Agency did not conduct a formal analysis of savings given that such an analysis would have resulted in negligible savings. This action represents the authorization of only 2.5 percent of the 1991 consumption baseline of methyl bromide to be made available for critical uses.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2179.03. This rule supplements the rule published in the **Federal Register** on December 23, 2004 (69 FR 76982). The information collection under this rule is authorized under Sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

The mandatory reporting requirements included in this rule are intended to:

(1) Satisfy U.S. obligations under The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of the Clean Air Act mendments of 1990 (CAAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of the CAAA.

In this rule, EPA is amending the reporting and recordkeeping Requirements in 40 CFR part 82 to require that entities report the amount of pre-phaseout methyl bromide

inventory, held for sale or for transfer to another entity, to the Agency on an annual basis. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories. The additional burden associated with the new recordkeeping and reporting requirements is summarized in the table below.

Collection activity	Number of respondents	Total number of responses	Hours per response	Total hours
Rule Familiarization	54	54	.5	27
Data Compilation (annual basis)	54	54	.5	27
Data Reporting (annual basis)	54	54	.5	27
Total Burden Hours		162		81

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; process and maintain information; disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming	0171—Berry 0171—Berry Crops	$0.75 million.
	1114—Greenhouse, Nursery, and Floriculture Production.	0181—Ornamental Floriculture and Nursery products.	
Storage Uses	115114—Postharvest crop activities (except Cotton Ginning). 493110—General Warehousing and Storage 493130—Farm Product Warehousing Storage	4221—Farm Product Warehousing and Storage 4225—General Warehousing and Storage.	21.5 million.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. Based on the data provided, EPA estimates that 3,218 entities petitioned EPA for an exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between one-fourth and one-third of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this rule are primarily agricultural entities, producers, importers, and distributors of methyl bromide, as well as any entities holding inventory of methyl bromide.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any

significant economic impact of the rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule will make additional methyl bromide available for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually, as a result of the entire critical use exemption program over its projected duration. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule creates a recordkeeping and reporting burden on the private sector that is estimated to be under $200,000 on an annual basis. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it does not create any requirements on any State, local, or tribal government.

E. Executive Order No. 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order No. 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order No. 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order No. 13175. Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The final rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this final rule.

G. Executive Order No. 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order No. 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order No. 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order No. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 9, 2005.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedures, Air pollution control, Chemicals, Exports, Imports, Ozone, Production, Reporting and recordkeeping requirements, and Treaties.

Dated: December 7, 2005.

Stephen L. Johnson,

Administrator.

■ 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.4 is amended by revising paragraph (p)(2)(vi) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(p) * * *

(2) * * *

(vi) No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period, excepting methyl bromide used under the quarantine and pre-shipment exemption, unless, subsequent to that person's use of the non-critical use methyl bromide, that person becomes subject to a prohibition on the use of methyl bromide alternatives due to the reaching of a local township limit described in Appendix L of this part, or becomes an approved critical user as a result of rulemaking.

* * * * *

■ 3. Section 82.8 is amended by revising paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2005 on a pro-rata basis in relation to the stocks held by each.

Company

Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corporation
Harvey Fertilizer and Gas
Helena Chemical Co.
Hendrix and Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corporation
ProSource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical, Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation

TOTAL 1,893,879 KILOGRAMS

■ 4.Section 82.13 is amended as follows:

■ a. By revising paragraphs (f)(3) introductory text, (f)(3)(xvii) and by adding (f)(3)(xviii).

■ b. By revising paragraph (g)(4) introductory text.

■ c. By adding paragraph (g)(4)(xix).

■ d. By revising paragraph (bb)(2)(iv) and adding paragraph (b)(2)(v).

■ e. By revising paragraph (cc)(2)(iv) and adding paragraph (cc)(2)(v).

■ f. By revising paragraph (dd).

§ 82.13 Recordkeeping and Reporting Requirements for class I controlled substances.

* * * * *

(f) * * *

(3) Reporting Requirements—Producers. For each quarter, except as specified below, each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

* * * * *

(xvii) A list of the quantities of class I, Group VI controlled substances produced by the producer and exported by the producer and/or by other U.S. companies in that control period, solely to satisfy the critical uses authorized by the Parties for that control period; and

(xviii) On an annual basis, the amount of methyl bromide produced or imported prior to the January 1, 2005, phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

(g) * * *

(4) Reporting Requirements—Importers. For each quarter, except as specified below, every importer of a class I controlled substance (including importers of used, recycled or reclaimed controlled substances) must submit to the Administrator a report containing the following information:

* * * * *

(xix) Importers shall report annually the amount of methyl bromide produced or imported prior to the January 1, 2005, phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(bb) * * *

(2) * * *

(iv) The number of unexpended and expended critical stock allowances;

(v) The amount of methyl bromide produced or imported prior to the January 1, 2005, phaseout date owned

by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(cc) * * *

(2) * * *

(iv) The number of unexpended and expended critical stock allowances;

(v) The amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

(dd) Every approved critical user purchasing an amount of critical use methyl bromide or purchasing fumigation services with critical use methyl bromide must, for each request, identify the use as a critical use and certify that it is an approved critical user. The approved critical user certification will state, in part: ''I certify, under penalty of law, that I am an approved critical user and I will use this quantity of methyl bromide for an approved critical use. My action conforms to the requirements associated with the critical use exemption published in 40 CFR part 82. I am aware that any agricultural commodity within a treatment chamber, facility, or field I fumigate with critical use methyl bromide cannot subsequently or concurrently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use (*e.g.*, a different crop or commodity). I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period, excepting a QPS treatment or a treatment for a different use (*e.g.*, a different crop or commodity), unless a local township limit now prevents me from using methyl bromide alternatives or I have now become an approved critical user as a result of rulemaking.'' The certification will also indicate the type of critical use methyl bromide purchased, the location of the treatment, the crop or commodity treated, the quantity of critical use methyl bromide purchased, and the acreage/square footage treated, and will be signed and dated by the approved critical user.

■ 5. Appendix L is revised to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses, and Limiting Critical Conditions for Those Uses for the 2005 Control Period

Column A	Column B	Column C
Approved Critical Uses.	Approved Critical User and Location of Use.	Limiting Critical Conditions.
	Pre-plant uses	
Cucurbits	(a) Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, and Virginia growers.	With a reasonable expectation that moderate to severe yellow or purple nutsedge infestation either already exists or could occur without methyl bromide fumigation.
Eggplant	(a) Georgia growers	With a reasonable expectation that moderate to severe yellow or purple nutsedge infestation either already exists or could occur without methyl bromide fumigation.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(c) Michigan Growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Forest Seedlings	(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	With a reasonable expectation that one or more of the following imiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(c) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, South Carolina, Oregon, and Washington.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(d) Public (government-owned) seedling nurseries in the states of California, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia, Wisconsin.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(e) Members of the Nursery Technology Cooperative limited to growing locations in Oregon and Washington.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.

Column A	Column B	Column C
	(f) Michigan seedling nurseries	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
Ginger	Hawaii growers	With a reasonable expectation that moderate to severe bacterial wilt infestation either already exists or could occur without methyl bromide fumigation.
Orchard Nursery Seedlings.	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits on this alternative have been reached.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits on this alternative have been reached.
	(c) Members of the California Association of Nurserymen—Citrus and Avocado Growers.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits on this alternative have been reached.
Orchard Replant	(a) California stone fruit growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) California table and raisin grape growers.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California walnut growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California almond growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) Yoder Brothers Inc. in Florida	For use in all chrysanthemum production.
	(b) California rose nurseries	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California Cut Flower Commission growers and Florida growers.	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Peppers	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, moderate to severe yellow or purple nutsedge infestation, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(d) Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.

Column A	Column B	Column C
Strawberry Nurseries.	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation.
	(b) North Carolina and Tennessee growers.	With a reasonable expectation that the use will occur in the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
Strawberry Fruit	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, moderate to severe yellow or purple nutsedge infestation, a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, or time to transition to an alternative.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or karst topography.
	(c) Alabama, Arkansas, Georgia, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
Sweet Potatoes	California growers	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Tomatoes	(a) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or fungal pathogen infestation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(d) California growers in San Diego and Ventura counties.	With a reasonable expectation that moderate to severe pest pressure exists and where alternatives are ineffective because of hilly terrain.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	For the production of industry-certified pure sod.
	(b) U.S. golf courses	For establishing sod in the construction of new golf courses or the renovation of putting greens, tees, and fairways.
Post-harvest uses		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that cannot be properly sealed to use an alternative to methyl bromide, the presence of sensitive electronic equipment subject to corrosivity, or time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For today's rule, ''pet food'' refers to domestic dog and cat food).	With a reasonable expectation that one or more of the following limiting critical conditions exists; older structures that cannot be properly sealed to use an alternative to methyl bromide, the presence of sensitive electronic equipment subject to corrosivity, or time to transition to an alternative.
	(c) Kraft Foods in the U.S.	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that cannot be properly sealed to use an alternative to methyl bromide, the presence of sensitive electronic equipment subject to corrosivity, or time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: older structures that cannot be properly sealed to use an alternative to methyl bromide, the presence of sensitive electronic equipment subject to corrosivity, or time to transition to an alternative.
	(e) Members of the National Pest Management Association (associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk)).	With a reasonable expectation that one or more of the following limiting critical conditions either already exists or could occur without methyl bromide fumigation: older structures that cannot be properly sealed in order to use an alternative to methyl bromide, the presence of electronic equipment that is subject to corrosivity, where heat treatment would cause rancidity to a particular commodity, or time to transition to an alternative is needed.
Commodity Storage	(a) Gwaltney of Smithfield in the U.S	For smokehouse ham curing facilities owned by the company.

Column A	Column B	Column C
	(b) Dry cured pork products: Members of the National Country Ham Association.	Pork product facilities who are members of the Association.
	(c) Dry cured pork products: Members of the American Association of Meat Processors.	Pork product facilities who are members of the Association.
	(d) Dry cured pork products: Nahunta Pork Center.	For facilities owned by the company.
	(e) California entities storing walnuts, beans, dried plums, figs, raisins, and pistachios in California.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season; when a buyer provides short (2 days or less) notification for a purchase; or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.
	(f) Growers and packers who are members of the California Date Commission, whose facilities are located in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

[FR Doc. 05–23971 Filed 12–12–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[Docket Number EPA–OW–2002–0027; FRL–8007–8]

RIN 2040–AE78

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending certain provisions of the regulations establishing effluent limitations guidelines, pretreatment standards and new source performance standards for the Iron and Steel Manufacturing Point Source Category. In 2002, EPA also promulgated amendments to these regulations. The earlier regulations authorized for direct discharges of pollutants the establishment of limitations applicable to the total mass of a pollutant discharged from more than one outfall—a ''water bubble.'' The effect of such a water bubble was to allow a greater or lesser quantity of a particular pollutant to be discharged from any single outfall so long as the total quantity discharged from the combined outfalls did not exceed the allowed mass limitation. Among the changes adopted in the 2002 amendments was a provision that prohibited establishment of a water bubble for oil and grease effluent limitations. Based on consideration of new information and analysis, EPA is reinstating the provision authorizing alternative oil and grease limitations with certain restrictions. Today's final rule also corrects errors in the effective date of new source performance standards for direct and indirect discharges of pollutants.

DATES: This final rule is effective on January 12, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OW–2002–0027. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Water Docket, EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Elwood H. Forsht, Engineering and Analysis Division, Office of Water, Mail code 4303T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–566–1025; fax number: 202–566–1053; and e-mail address: *forsht.elwood@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by this action include facilities of the following types that discharge pollutants directly or indirectly to waters of the U.S.:

Category	Examples of regulated entities	NAICS codes
Industry ..	Discharges from existing and new facilities engaged in metallurgical cokemaking, sintering, ironmaking, steelmaking, direct reduced ironmaking, briquetting, and forging.	3311, 3312

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definitions and applicability criteria in §§ 420.01,

420.10, 420.20, 420.30, 420.40, 420.50, 420.60, 420.70, 420.80, 420.90, 420.100, 420.110, 420.120, and 420.130 of title 40 of the Code of Federal Regulations. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–OW–2002–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

C. What Process Governs Judicial Review for Today's Final Rule?

In accordance with 40 CFR 23.2, today's rule is considered promulgated for the purposes of judicial review as of 1 p.m. Eastern Daylight Time, December 27, 2005. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

II. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authorities of sections 301, 304, 306, 308, 402 and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361.

III. Overview of Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Industry

A. Legislative Background

Congress adopted the Clean Water Act (CWA) to Arestore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (section 101(a), 33 U.S.C. 1251(a)). To achieve this, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA confronts the problem of water pollution on a number of different fronts. It relies primarily, however, on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the Nation's waters would not achieve the CWA's goals. Consequently, the CWA requires EPA to set nationally-applicable pretreatment standards that restrict pollutant discharges from those who discharge wastewater into sewers flowing to publicly-owned treatment works (POTWs) (section 307(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

B. Overview of 1982 Rule and 1984 Amendment

EPA promulgated effluent limitations guidelines and pretreatment standards for the Iron and Steel Point Source Category on May 27, 1982 (47 FR 23258), at 40 CFR part 420, and amended these regulations on May 17, 1984 (49 FR 21024). These actions established limitations and standards for three types of steel-making operations: Cokemaking, hot-end and finishing operations. Regulations at subpart A of part 420 cover cokemaking operations. Regulations at subpart B (sintering), subpart C (ironmaking), subpart D (steelmaking), subpart E (vacuum degassing), subpart F (continuous casting) and subpart G (hot forming) cover hot-end operations. Subpart H (salt bath descaling), subpart I (acid pickling), subpart J (cold forming), subpart K (alkaline cleaning) and subpart L (hot coating) cover finishing operations.

The 1984 amendment (49 FR 21028; May 17, 1984) also included a provision that would allow existing direct dischargers to qualify for ''alternative effluent limitations'' for a particular pollutant that was different from the otherwise applicable effluent limitation. These ''alternative'' limitations represented a mass limitation that would apply to a combination of outfalls. Thus, a facility with more than one outfall would be subject to a combined mass limitation for the grouped outfalls rather than subject to mass limitations for each individual outfall. This provision allowed for in-plant trading under a ''water bubble.'' The effect of this provision was to allow a facility to exceed the otherwise applicable effluent mass limitation for a particular outfall within a group of outfalls so long as the facility did not exceed the allowed mass limitations for the grouped outfalls. The provision prohibited establishing alternative effluent limitations for cokemaking (subpart A) and cold forming (subpart J) process wastewaters. See 40 CFR 420.03(b) (2001 ed.). The water bubble is a regulatory flexibility mechanism that allows trading of identical pollutants at any existing, direct discharging steel facility with multiple compliance points.

C. The Water Bubble Provisions in the 2002 Rule

On October 17, 2002, EPA promulgated amendments to the iron and steel regulations (67 FR 64216). In that action, EPA revised effluent limitations guidelines and standards for subpart A (cokemaking), subpart B

(sintering), subpart C (ironmaking), and subpart D (steelmaking), and promulgated new effluent limitations guidelines and standards for a new subpart, subpart M (other operations), that is also considered a hot-end operation. Subparts E through L remained unchanged.

At that time, EPA also amended the scope of § 420.03—the water bubble provision—to allow establishment of alternative mass limitations for facilities subject to new source standards and for cold rolling operations. At the same time, EPA excluded oil and grease (O&G) trading under the water bubble. 40 CFR 420.03(c); 67 FR 64261 (October 17, 2002).

EPA allowed trades involving cold forming operations (subpart J) because of process changes since promulgation of the 1984 amendments. The original prohibition of trades involving cold rolling operations was primarily based on concerns about discharges of naphthalene and tetrachloroethylene. Since the 1984 amendments, industry use of chlorinated solvents for equipment cleaning has virtually been eliminated and the use of naphthalene-based rolling solutions has been significantly reduced. (67 FR 64254) Consequently, EPA concluded that trading involving cold rolling operations could be authorized without adverse consequences to receiving waters.

Prior to the 2002 revision, described above, part 420 authorized the establishment of a single mass effluent limitation for O&G for multiple outfalls. There were three steel mills that had applied for and received alternative O&G limitations under § 420.03. In the 2002 rule, EPA explained that it had decided not to allow trades of O&G pollutant discharges among different outfalls because of differences in the types of oil and grease used among iron and steel operations. See 67 FR 64261, 64254 (October 17, 2002).

After publication of the 2002 amendment, representatives of steel mills affected by this change expressed concern about the prohibition on establishing alternative O&G effluent limitations under the water bubble and requested that EPA revise § 420.03 to reinstate O&G trading. The representatives asserted that EPA did not appropriately account for compliance costs for those facilities possessing permits with alternative O&G limitations when the Agency decided to prohibit oil and grease trading. They also asserted that these costs, due to the loss of the treatment flexibility provided by the water bubble, would be substantial. In August 2005, having reviewed the information provided concerning these facilities, EPA proposed to amend the regulation to restore the regulatory flexibility related to O&G trading for direct discharges of pollutants. EPA also proposed to correct typographical errors in the new source performance standards dates for direct and indirect discharges of pollutants. (70 FR 46459; August 10, 2005)

IV. Public Comment and Responses

EPA received four comments in response to the August 10, 2005, proposal. One trade association and one iron and steel company supported the proposal to reinstate the provision authorizing alternative oil and grease limitations with the associated restrictions. One commenter requested guidance on how the proposed changes would be implemented in the case of indirect dischargers. EPA notes that the I&S water bubble applies only to the direct discharge of process wastewater. Finally, one public interest group objected to the proposal contending that the proposal would allow excessive oil and grease discharges from single outfalls, as long as the overall permit limit was maintained. The commenter suggested the possibility that polynuclear aromatic hydrocarbons could accumulate in river sediment due to oil and grease loadings.

EPA disagrees that excessive amounts of oil and grease could be discharged to surface waters of the United States through the use of the water bubble. The total discharge of oil and grease from a facility (i.e., total allowable oil and grease from all outfalls at a facility), as allowed by 40 CFR part 420, would not change because of this amendment. This amendment would only authorize facilities to discharge varying amounts of oil and grease from individual outfalls, on the condition that the total oil and grease discharged from all of the outfalls of the facility does not exceed that allowed by 40 CFR part 420. In other words, the provision allows a facility to exceed the otherwise applicable effluent mass limitation for a particular outfall within a group of outfalls so long as the facility does not exceed the allowed mass limitations for the grouped outfalls. This provides facilities more economic flexibility to achieve compliance with limits, without increasing the amount of pollutants discharged to the environment. If there are any site-specific issues or water quality problems at one or more of these outfalls, the permitting authority could modify the application of the water bubble as needed to address the specific situation. Furthermore, the amendment retains the trading restriction on cokemaking operations which tend to be the source of polynuclear aromatic hydrocarbons in the iron and steel industry. (67 FR 64254; October 17, 2002) The cokemaking restriction in the water bubble (40 CFR 420.03(f)(1)) allows alternative limitations only if they are more stringent than the (oil and grease) limitations in the cokemaking subcategory. In this case, use of the water bubble could decrease the amount of polynuclear aromatics discharged to the surface waters of the United States.

After analysis and review of comments received on the proposed amendment, EPA has determined that it should adopt the proposed modifications to the current regulation.

V. Amendment To Restore Oil and Grease to the Water Bubble

Today, EPA is amending § 420.03 to reinstate O&G as a pollutant parameter for which alternative effluent limitations may be established with one exception. The amendment prohibits sintering process O&G trades unless one condition is met. When establishing alternative O&G mass limitations for combined outfalls that include outfalls with sintering process wastewater, the allocation for sintering process wastewater must be at least as stringent as otherwise required by subpart B. This restriction addresses the Agency's concern about the possibility of net increases in discharges of furans and dioxins. Sinter lines may receive wastes from all over the facility, from other facilities owned by the same company, and, in some cases, from other companies. Therefore, the sintering process O&G constituents are unpredictable and may contain solvents, a likely source material for furan and dioxin formation.

EPA anticipates no additional compliance costs for the three steel mills that have applied for and received alterative O&G limitations for multiple outfalls in the past. EPA anticipates that today's amendment presents opportunities for other facilities (through existing plant configurations or future expansions) to utilize the cost saving, regulatory flexibility provided by the provisions for establishing alternative O&G limitations under the water bubble.

VI. Corrections and Edits to 40 CFR Part 420

EPA is correcting typographical errors contained in the October 17, 2002, final rule (67 FR 64216). The Code of Federal Regulations (2004 ed.) contains an error for the new source performance standards dates at §§ 420.14(a)(1), 420.16(a)(1), 420.24(a), and 420.26(a)(1). As published, the dates used to

determine whether a facility must comply with new source requirements do not make sense, because the ''beginning date'' was later than the ''ending date.'' The first sentence in each of these citations is amended to read as follows: ''Any new source subject to the provisions of this section that commenced discharging after November 18, 1992 and before November 18, 2002, must continue to achieve the standards specified in § 420.14 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001 * * *'' The November 18, 1992 date was incorrectly published as November 19, 2012.

In addition, the ''Authority'' citation is revised to conform to current guidance from the Office of the Federal Register.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action would not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The amendment would re-instate O&G as a pollutant parameter for which alternative effluent limitations and standards under the ''water bubble'' provision of the rule may be available and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. Consequently, today's rule does not establish any new information collection burden on the regulated community.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on full time employees (FTEs) or annual revenues established by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The amendment would re-instate O&G as a pollutant parameter for which alternative effluent limitations and standards may be established. These changes may reduce the economic impacts of the regulation on those entities, including small entities that have already elected or may elect to use the trading provisions of the water bubble for alternative O&G effluent limitations. The change in the compliance date for new source performance standards would result in no economic burden. The change would only correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has therefore concluded that the rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendment would re-instate O&G as a pollutant parameter for which alternative effluent limitations and standards may be established and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has determined that this final rule will result in no additional costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would not uniquely affect small governments because small and large governments are affected in the same way. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The amendment would re-instate O&G as a pollutant parameter for which alternative effluent limitations and standards may be established and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has determined that there are no iron and steel facilities owned and/or operated by State or local governments that would be subject to today's rule. Further, the rule would only incidentally affect State and local governments in their capacity as implementers of CWA NPDES permitting programs and approved pretreatment programs. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The amendment would re-instate O&G as a pollutant parameter for which alternative effluent limitations and standards may be established and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has not identified any iron and steel facilities covered by today's rule that are owned and/or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not economically significant as defined under Executive Order 12866. Further, this regulation does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This regulation is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any new voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on January 12, 2006.

List of Subjects in 40 CFR Part 420

Environmental protection, Iron, Steel, Waste treatment and disposal, Water pollution control.

Dated: December 7, 2005.

Stephen L. Johnson,

Administrator.

■ For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 420—IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY

■ 1. The authority citation for part 420 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

■ 2. Section 420.03 is amended by removing and reserving paragraph (c), by removing the ''; and'' at the end of paragraph (f)(1) and adding a period in its place, and by adding paragraph (f)(3) to read as follows:

§ 420.03 Alternative effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available, best available technology economically achievable, best available demonstrated control technology, and best conventional pollutant control technology (the ''water bubble'').

* * * * *

(f) * * *

(3) There shall be no alternate effluent limitations for O&G in sintering process wastewater unless the alternative limitations are more stringent than the otherwise applicable limitations in subpart B of this part.

§ 420.14 [Amended]

■ 3. Section 420.14 is amended in paragraph (a)(1) by removing the date ''November 19, 2012'' and replacing it with the date ''November 18, 1992.''

§ 420.16 [Amended]

■ 4. Section 420.16 is amended in paragraph (a)(1) by removing the date ''November 19, 2012'' and replacing it with the date ''November 18, 1992.''

§ 420.24 [Amended]

■ 5. Section 420.24 is amended in paragraph (a) by removing the date ''November 19, 2012'' and replacing it with the date ''November 18, 1992.''

§ 420.26 [Amended]

■ 6. Section 420.26 is amended in paragraph (a)(1) by removing the date ''November 19, 2012'' and replacing it with the date ''November 18, 1992.''

[FR Doc. 05–23973 Filed 12–12–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–1908–F]

RIN 0938–AN81

Medicare Program; Application of Inherent Reasonableness Payment Policy to Medicare Part B Services (Other Than Physician Services)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule finalizes the process that was set forth in an interim final rule published on December 13, 2002, for establishing a realistic and equitable payment amount for Medicare Part B services (other than physicians' services) when the existing payment amounts are inherently unreasonable because they are either grossly excessive or grossly deficient. This process does not apply to services paid under a prospective payment system, such as outpatient hospital services or home health services. The December 2002 interim final rule also described the factors we (or our carriers) will consider and the procedures we will follow in establishing realistic and equitable payment amounts for Medicare Part B services.

In addition, this final rule responds to public comments we received on two provisions in the December 13, 2002 interim final rule relating to how we define grossly excessive or deficient payment amounts and to the criteria for using valid and reliable data in applying the inherent reasonableness authority.

EFFECTIVE DATE: This final rule is effective on February 13, 2006.

FOR FURTHER INFORMATION CONTACT: William Long, (410) 786–5655.

SUPPLEMENTARY INFORMATION:

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I. Background: Legislative and Regulatory Authority

Title XVIII of the Social Security Act (the Act) contains various methodologies for making payment under Part B of the Medicare program. These payment methodologies vary among the different categories of items and services covered under Medicare Part B.

A. The Consolidated Omnibus Budget Reconciliation Act of 1985

Section 9304(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA of 1985), Public Law 99–272, effective September 10, 1986, added section 1842(b)(8) to the Act, which expressly authorizes the Secretary to deviate from the payment methodologies prescribed in the Act if their application results in a payment amount for a particular service or group of services that is determined to be grossly excessive or deficient and, therefore, is not inherently reasonable. The statute also requires the Secretary to describe in regulations the factors to be considered in determining an amount that is realistic and equitable. The Secretary has always taken the position that the authority to regulate unreasonable payment amounts is inherent in his or her authority to determine reasonable charges according

to section 1842 of the Act, and, since January 1, 1991, has taken the position that this authority applies to other Part B payment methodologies, not just those payment methodologies under section 1842 of the Act.

On August 11, 1986, we published a final rule with comment period in the **Federal Register** (51 FR 28710) to implement the provisions of section 1842(b)(8) of the Act, as added by section 9304(a) of the COBRA of 1985, under regulations at 42 CFR 405.502(g) and (h). These regulations described the factors to be used in determining if the application of the reasonable charge methodology results in a charge that is grossly excessive or grossly deficient. The regulations also described the factors to be considered in establishing a reasonable charge that is realistic and equitable. When we implemented section 1842(b)(8) of the Act, as added by section 9304(a) of the COBRA of 1985, we interpreted the statute as applying not only to the Secretary's authority to establish national reasonable charge limits, but also to the Medicare carriers' authority to establish carrier-level reasonable charge limits on grossly excessive or deficient charges.

B. The Omnibus Budget Reconciliation Act of 1986

Section 9333 of the Omnibus Budget Reconciliation Act of 1986 (OBRA)(Pub. L. 99–509) amended section 1842(b)(8) of the Act and added new paragraphs (b)(9) and (b)(10). These amendments specified the distinct procedures under which the Secretary may establish special reasonable charge limits for physicians' services and provided for a limitation on the amount that nonparticipating physicians may charge for a service if a special reasonable charge limit is established for that physician service.

On July 11, 1988, we issued a final rule in the **Federal Register** (53 FR 26067) that conformed the regulations to the provisions of section 1842(b)(8) of the Act, as amended by the OBRA, and sections 1842(b)(9) and (b)(10) of the Act, as added by the OBRA. That final rule also responded to comments received on the August 11, 1986 final rule with comment period that implemented section 9304(a) of the COBRA of 1985.

C. The Balanced Budget Act of 1997

Section 4316 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, enacted on August 5, 1997, amended sections 1842(b)(8) and (b)(9) of the Act, which permit the Secretary to deviate from the payment methodologies prescribed in title XVIII of the Act if their application results in a payment amount that, because it is determined to be grossly excessive or deficient, is not inherently reasonable. Sections 1842(b)(8) and (b)(9) of the Act, as amended, also require the Secretary to describe the factors to be considered in determining an amount that is realistic and equitable. Specifically, section 4316 of the BBA amended section 1842(b)(8) of the Act to—

- Exclude physicians' services from application of the inherent reasonableness payment policy;
- Extend the authority to establish special payment limits to Medicare carriers, regardless of the methodology for determining payment;
- Simplify the inherent reasonableness process for adjustments to payment amounts that are 15 percent or less. Specifically, section 4316 of the BBA amended section 1842(b)(8) by adding provisions that apply if a reduction or increase would vary the payment amount by 15 percent or less ''during any year.'' (Other provisions apply to larger increases and decreases.) Under this authority, we (or a carrier) may determine that more than a 15-percent adjustment is warranted, but we may choose to apply only a 15-percent adjustment in any given year and use the ''15-percent'' methodology. For example, we (or a carrier) may determine that a 25-percent reduction is warranted. However, the adjustment could be accomplished over 2 years—15 percent applied the first year, and 10 percent applied the following year.
- Require the Secretary to consider the following factors in making inherent reasonableness determinations concerning payment for Part B services (other than physicians' services) and permit the Secretary to consider any additional factors determined to be appropriate:

(1) Medicare and Medicaid are the sole or primary sources of payment for a category of items or services.

(2) The payment amount for a category of items or services does not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.

(3) The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

Section 4316 of the BBA also made minor changes to section 1842(b)(9) of the Act relating to the process for formally notifying the public of, and obtaining public comment on, a proposed inherent reasonableness determination and a proposed payment adjustment and for announcing the final payment adjustment determination.

On January 7, 1998, we published in the **Federal Register** (63 FR 687) an interim final rule that implemented sections 1842(b)(8) and (b)(9) of the Act, as amended by section 4316 of the BBA. In the January 7, 1998 interim final rule, we revised § 405.502(g) and (h) to exclude references to physicians' services from the application of the inherent reasonableness policy. We also deleted specific references to the reasonable charge payment methodology because the inherent reasonableness provisions apply to all Part B services, except physicians' services, irrespective of the payment methodology. However, we specified that the rule did not apply to services paid under a prospective payment system, such as outpatient hospital services or home health services. We also reflected the change in the statute that permitted us to simplify the process for making adjustments to payment amounts for a category of items or services when the increase or decrease in the payment amount is no more than 15 percent per year. (For purposes of § 405.502(g) and (h), a ''category of items or services'' may consist of a single item or service or any number of items or services.)

Although the BBA gave the Secretary discretion to reduce the number of factors that are used to make inherent reasonableness determinations, in the January 1998 interim final rule, we retained four of the five factors that appeared in § 405.502(g)(1) because they remain as appropriate factors for determining deficient or excessive payment amounts. We removed the factor related to the use of new technology for which an extensive charge history does not exist because there was already in place an alternative process for establishing payment amounts for new items or services for which an extensive charge history does not exist. (We note that we reinserted this example of a factor in the December 13, 2002 interim final rule discussed in section I.D. of this final rule because we had received requests that this example factor not be deleted.) We included the following additional factors we may (but we are not limited to) consider:

- The market place is not competitive.
- The payment amounts in a particular locality grossly exceed amounts paid in other localities for the category of items or services.
- The payment amounts grossly exceed acquisition or production costs for the category of items or services.

• There have been increases in payment amounts that cannot be explained by inflation or technology.

We interpreted the provisions of section 4316 of the BBA relating to the Secretary's authority and a Medicare carrier's authority in the same manner that we had done for the COBRA of 1985. That is, we interpreted the statute as codifying both our authority and a carrier's authority to establish realistic and equitable payment amounts. Thus, in the January 7, 1998 interim final rule, we described the circumstances and factors our carriers and we would use in setting realistic and equitable payment amounts if the existing payment amounts are grossly excessive or deficient.

D. The Balanced Budget Refinement Act of 1999

Section 223 of the Balanced Budget Refinement Act (BBRA) of 1999, Public Law 106–113, enacted on November 29, 1999, prohibited the use of the inherent reasonableness authority under section 1842(b) of the Act until the following events had occurred:

Event 1: The Comptroller General had released a report regarding the impact of the Secretary's fiscal intermediaries' and carriers' use of the authority. (This report, entitled ''Medicare Payments-Use of Revised 'Inherent Reasonableness' Generally Appropriate (GAO/HEHS–OO–79),'' was released by the General Accounting Office (GAO) (now the Government Accountability Office) in July 2000.)

Event 2: The Secretary had published a notice of final rulemaking in the **Federal Register** that related to the authority and that responded to the GAO report and to comments received in response to the Secretary's interim final regulation relating to the authority that was published on January 7, 1998. (The notice of final rulemaking was published in the **Federal Register** on December 13, 2002 (67 FR 76684), and is discussed below in this section I.D. of this final rule. That notice also responded to the GAO report.)

Event 3: In publishing the final regulation, the Secretary had reevaluated the appropriateness of the criteria included in the interim final regulation for identifying payments that are excessive or deficient. (The December 13, 2002 interim final rule, discussed below in this section I.D. of this final rule, provided greater specificity of the criteria for identifying grossly excessive or deficient payments and provided opportunity for further public comment because of that specificity. We are responding to the public comments received on these more specific criteria under section II. of this final rule.)

Event 4: The Secretary had taken appropriate steps to ensure the use of valid and reliable data when exercising the authority. (The December 13, 2002 interim final rule, discussed below in this section I.D. of this final rule, addressed the use of valid and reliable data and provided opportunity for further public comment on this area. We are responding to the public comments received on the use of data under section II. of this final rule.)

As we indicated earlier, section 223 of the BBRA directed us to respond to the July 2000 GAO report. In its report, the GAO found that CMS' use of the revised inherent reasonableness process was generally appropriate and made four specific recommendations.

Recommendation: In publishing the final rule on the inherent reasonableness process, CMS should define with sufficient clarity the terms ''grossly excessive'' and ''grossly deficient.''

Recommendation: For future inherent reasonableness reviews based on survey data, CMS or the carriers should develop and implement a more structured survey design, including sample selection, survey instrumentation, and data collection methods, and ensure that the design is consistently used by all entities conducting the survey.

Recommendation: CMS and the carriers should collect and analyze additional information to more precisely estimate any payment reductions for glucose test strips, albuterol sulfate, and enteral formulas, as well as for additional payment reductions in subsequent years for lancets, eyeglass frames, latex Foley catheters, and catheter insertion trays without drainage bags.

Recommendation: CMS should monitor indicators that could signal potential problems with patient access to the product groups for which it is reducing maximum payments and act quickly to rectify any problems that arise.

On December 13, 2002, we published in the **Federal Register** (67 FR 76684) an interim final rule that constituted a notice of final rulemaking relating to the inherent reasonableness authority provisions as required by section 223 of the BBRA. In the December 13, 2002 interim final rule, we responded to the recommendations of the GAO report and responded to the public comments received on the January 7, 1998 interim final rule that implemented section 4316 of the BBA.

We note that we issued the December 13, 2002 document as an interim final rule so that the public would have an additional opportunity to comment particularly on two provisions that contained further specificity than that found in the January 7, 1998 interim final rule. These provisions, discussed below, related to (1) defining grossly excessive and deficient payment amounts (§ 405.502(g)(1)(ii) of the regulations); and (2) taking appropriate steps to ensure the use of valid and reliable data when exercising the inherent reasonableness authority (§ 405.502(g)(4) of the regulations). We are responding to the public comments received on these two provisions in section II. of this final rule. We had already received public comments on the other BBRA provisions that were implemented when we published the January 7, 1998 interim final rule; these comments were addressed in section V. of the December 13, 2002 interim final rule. We also refer the readers to section IV. of the December 13, 2002 interim final rule (67 FR 76686) for a full discussion of CMS' responses to the GAO report recommendations.

We note that the statute applies inherent reasonableness to Part B items and services, except for physicians' services as defined and paid for under section 1848 of the Act. Hospital outpatient services are not excluded from the inherent reasonableness provisions of the law. In addition, the inherent reasonableness authority can be used in cases for which the standard rules for determining payment amounts for drugs paid under section 1842(o) of the Act or laboratory services paid under section 1842 of the Act result in grossly deficient or excessive payment amounts. However, we decided that we would not apply the inherent reasonableness provisions to services paid under a prospective payment system such as outpatient hospital services or home health services. In 2002, we excluded those payment methodologies from the application of inherent reasonableness because we believe they have other mechanisms to address the concerns otherwise appropriately addressed through an inherent reasonableness mechanism. In addition, as discussed under section II. of this preamble, because of the new pricing methodology for Part B drugs established by section 303 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173), we do not anticipate the need to apply the inherent reasonableness provisions to these drugs at this time; however, we

are retaining our authority to apply inherent reasonableness to these drugs if the need arises.

II. Provisions of This Final Rule

As discussed in section I.D. of this preamble, in the interim final rule published in the **Federal Register** on December 13, 2002, we provided an additional opportunity for public comment on two provisions of that interim final rule because the two provisions contained further specificity than that found in the January 7, 1998 interim final rule: (1) the definition of grossly excessive and deficient payment amounts; and (2) criteria for the use of valid and reliable data when exercising the inherent reasonableness authority.

We received 189 timely pieces of correspondence in response to the December 13, 2002 interim final rule. A large number of these comments concerned issues (other than the two provisions on which we particularly invited additional public comments) that we had received public comments on and responded to in the December 13, 2002 interim final rule (67 FR 76684). The comments and our responses follow, along with a cross reference to the page in which they appeared in the December 13, 2002 **Federal Register**. These included comments on the use of an inherent reasonableness appeals process (page 76688); carriers' use of the inherent reasonableness authority (page 76691); the application of inherent reasonableness authority to laboratory services (page 76690); delaying application of the inherent reasonableness authority to laboratory services pending CMS' response to the Institute of Medicine's study on Medicare Part B laboratory services (page 76688); the definition and clarification of factors used to determine grossly excessive or deficient payment amounts (the factors are the examples mentioned in § 405.502(g)(1)(vii) and do not relate to the definition of grossly excessive and deficient payment amounts) (page 76689); the use of cost and charges as factors for determining grossly excessive or deficient payment amounts (page 76690); the use of an all-inclusive rather than a nonexclusive list of inherent reasonableness factors (page 76689); the use of the terms ''floor'' and ''ceiling'' rather than ''payment limit'' when referring to inherent reasonableness adjustments (page 76690); establishing a fair and open inherent reasonableness process (page 76688); delaying implementation of the inherent reasonableness authority rule (page 76687); establishing a petition process for inherent reasonableness determinations (page 76692); detection of grossly deficient payment amounts (page 76688); and the reaction of other payors to Medicare payment limits established using inherent reasonableness authority (page 76688). Because we addressed these issues in promulgating the December 13, 2002 interim final rule, we refer the readers to that document; we will not repeat our responses in this final rule except for the effect on beneficiary access. As stated in our December 13, 2002 interim final rule, we will monitor patient access to items for which payment amounts are adjusted using the inherent reasonableness process by periodically checking the rate at which suppliers are accepting assignment for these items and by monitoring any beneficiary complaints regarding access (page 76687).

A discussion of the two provisions on which we solicited additional public comments, summaries of the public comments that we received in response to them, and the Departmental responses follow.

A. Definition of Grossly Excessive and Deficient Payment Amounts

In the December 13, 2002 interim final rule, in response to the GAO recommendation and in response to public comments received on the January 1998 interim final rule, we clarified when a payment amount is considered grossly excessive or deficient for purposes of applying the inherent reasonableness authority. We specified in § 405.502(g)(1)(ii) that a payment amount will not be considered grossly excessive or grossly deficient if the overall payment adjustment is less than 15 percent. This definition does not preclude adjustments of less than 15 percent in a given year once it is determined that an overall adjustment of 15 percent or more is justified.

The statute provides two different processes once a determination is made that a payment amount is grossly excessive or deficient. That is, the statute specifies a process for adjustments of 15 percent or more in a given year and a simplified process for adjustments of less than 15 percent in a given year. However, the statute did not define what constitutes a grossly excessive or deficient payment amount. Nevertheless, the statute placed significant importance on a 15-percent criterion. For this reason, we have decided that differences between current and proposed payment amounts of less than 15 percent will not be considered grossly excessive or grossly deficient and, therefore, will not provide a sufficient basis for using inherent reasonableness authority. This definition does not preclude adjustments of less than 15 percent in a given year once it is determined that an overall adjustment of 15 percent or more is justified.

As directed by the statute, in the December 13, 2002 interim final rule, we reviewed the criteria for identifying payments that are excessive or deficient set forth in the January 7, 1998 interim final rule and codified in § 405.502(g)(1)(vii) of the regulations. While amended section 1842(b)(8)(C) of the Act does not specifically require that we include all the factors for making inherent reasonableness determinations for a category of items or services in regulations, it permits the Secretary to consider any additional factors determined to be appropriate. The examples listed in § 405.502(g)(1)(vii) are merely examples, and the regulation explicitly states that the list of examples is not all-inclusive. When making an inherent reasonableness determination, we can use one or more of the examples listed in the regulation or an example that is not listed in the regulation. This approach allows us to adapt the methodology we use to address the various specific issues that may pertain to any particular case regarding the use and availability of data as well as other factors relevant to making an inherent reasonableness determination in that case.

In the December 13, 2002 interim final rule, we pointed out that the criteria in § 405.502(g)(1)(vii) were never intended to include every set of circumstances where inherent reasonableness would be considered appropriate. These same criteria had also been included in the August 11, 1986 final regulation and, therefore, were not new; they had been in effect for over 10 years. These criteria were originally established by the Congress and were contained in section 1842(b)(8) of the Act until it was revised by section 4316 of the BBA. We also indicated that the criteria remain as appropriate at the time of issuance of the interim final rule as they were when the Congress established them. Further, we indicated that we would need compelling reasons for determining that any of the criteria were inappropriate. These criteria are furnished as examples of situations of possible grossly excessive or deficient payment amounts, and we believe they are realistic and continue to be relevant.

Comment: Five commenters agreed with CMS' definition of grossly excessive and grossly deficient. Seven commenters stated that the regulations failed to provide a complete or adequate

definition of the terms. The commenters were concerned that the definition set forth in the regulations did not comply with the statutory requirement to fully describe all the factors that CMS or its carriers will use to determine whether a payment is grossly excessive or deficient. While some of the commenters indicated their support for using a quantitative value of 15 percent to define a grossly excessive payment amount, they argued that the definition should also incorporate the use of objective criteria for consistency in determining grossly excessive payment amounts. The commenters indicated that, in the absence of a clear and precise definition, CMS or its carriers could arbitrarily establish new factors or criteria for determining grossly excessive payment amounts.

One commenter stated that CMS has rebuffed industry assistance in developing a definition that incorporates objective benchmarks. This commenter indicated that without a more precise definition, providers, suppliers, and beneficiaries would not receive adequate notice of program policies.

Response: We appreciate the commenters' support for CMS' definition of grossly excessive and grossly deficient. The statute does not specifically require us to fully describe or include all the factors that may be used in making inherent reasonableness determinations. Section 1842(b)(8)(C) of the Act provides examples of factors that can result in payment amounts that are grossly excessive or grossly deficient. The Act also provides methods that can be used to establish reasonable payment amounts. We do not believe it is practical or necessary to further describe these lists of examples or to make them the only methods we can use. Rather, we believe it is more appropriate to establish general factors that allow us flexibility in adapting inherent reasonableness applications to a wide array of items of services encompassed under Medicare Part B, under different marketing conditions, and considering the availability of data. In addition, we believe that the proposed use of the 15-percent threshold to define a grossly excessive or deficient payment amount is appropriate and is an objective criterion.

We note that no item or service is subject to a change in payment under the inherent reasonableness authority until the proposed change is published by either CMS in the **Federal Register** or its carriers in their own publication and after public comments received in response to the proposed notice are considered.

Comment: One commenter stated that CMS' decision to set the percentage threshold definition for a grossly excessive or deficient payment amount at 15 percent did not appear to be consistent with section 1842(b)(8) of the Act and the GAO report. The commenter stated that section 1842(b)(8) of the Act appeared to anticipate the need for grossly excessive or deficient payment adjustments at percentages less than 15 percent. The commenter argued that the GAO report clearly stated that an adjustment of less than 15 percent could qualify as a grossly excessive or deficient payment amount. For these reasons, the commenter urged CMS to lower the 15-percent threshold to be consistent with section 1842(b)(8) of the Act and the GAO report and suggested setting the threshold at 7.5 percent.

Response: While the commenter is correct regarding the statement included in the GAO report concerning the use of a 15-percent threshold, we explained in section IV. of the December 13, 2002 interim final rule in response to a GAO recommendation our reason for not setting the threshold at less than 15 percent. As stated in that rule, the statute does not define what constitutes a grossly excessive or deficient payment amount. Rather, the statute provides two different processes once a determination is made that a payment amount is grossly excessive or deficient. That is, the statute specifies a process for adjustments of 15 percent or more in a given year and a simplified process for adjustments of less than 15 percent in a given year. In so doing, the statute places significant importance on a 15-percent criterion. For these reasons, we determined that differences between current and proposed payment amounts of less than 15 percent will not be considered grossly excessive or grossly deficient and, therefore, do not provide a basis for using the inherent reasonableness authority. Our definition of grossly excessive or deficient does not preclude adjustments of less than 15 percent in a given year once it is determined that an overall adjustment of 15 percent or more is justified.

Comment: Four commenters believed that CMS' interpretation and definition of grossly excessive in relation to overpayment for Medicare Part B drugs is incorrect and without a factual basis. The commenters indicated that the statute does not define what constitutes a grossly excessive payment amount. Some of the commenters urged CMS to adopt a more realistic understanding of the implications of its stated policy on the delivery of health care to patients with cancer in this country.

Response: The commenters are correct in stating that the statute does not define what constitutes a grossly excessive payment amount. The statute applies inherent reasonableness to Part B items and services other than physicians' services as defined and paid for under section 1848 of the Act. Drugs are paid under section 1842(o) of the Act and not section 1848 of the Act. The inherent reasonableness authority can and should be used in cases for which the standard rules for determining payment amounts for drugs result in grossly deficient or excessive payment amounts. Effective January 1, 2004, section 303 of Public Law 108–173, enacted on December 8, 2003, established a new pricing methodology for Part B drugs, including those furnished by oncologists to their cancer patients, that are not paid on a cost or prospective payment basis. Because of this new pricing methodology, we do not anticipate the need to apply the inherent reasonableness authority to Part B drugs at this time, although we retain our authority to do so. Public Law 108–173 did not amend section 1848 of the Act to explicitly exclude Part B drugs from the inherent reasonableness authority. Therefore, although we believe we have the authority to do so, we will not exclude Part B drugs from the group of services for which we would consider using the inherent reasonableness authority.

Comment: One commenter stated that CMS and the carriers must consider the service components (for example, transportation, set-up, patient education, and servicing) of all Part B therapies and items when defining the grossly excessive payment amounts.

Response: We agree with the commenter. The regulations require that when using wholesale costs, the cost of services necessary to furnish a product will be taken into account in making an inherent reasonableness determination. However, we believe that for other types of comparison, for example, using a retail price, that price generally includes the service component. Should the retail price not include recognition of a service component, the service component will, of course, be considered in making an inherent reasonableness determination.

Comment: Three commenters urged CMS to revise its definition of grossly excessive or grossly deficient to provide sufficient notice about the specific payment allowances that would be subject to the inherent reasonableness authority. The commenters believed that

the 15-percent threshold should be based on objective criteria that would measure market reality rather than basing it on a nonexclusive list of factors. The commenters recommended that CMS revise the definition of grossly excessive or grossly deficient to state that a Medicare payment amount for a category of items or services will be considered grossly excessive or deficient ''only if the average amount paid by all non-Medicare payers for the same category of items or services is at least 15 percent greater or less than such Medicare amount.''

Response: We do not believe it is necessary to revise our definition of grossly excessive or grossly deficient to provide notice about the specific payment allowances. The statute applies inherent reasonableness to Part B items and services other than physicians' services as defined and paid for under section 1848 of the Act. However, we decided not to apply this rule to services paid under a prospective payment system such as hospital outpatient services or home health services. As previously stated, no item or service is subject to a change in payment under the inherent reasonableness authority until the proposed change is published by either CMS in the **Federal Register** or its carriers in their own publications after public comments are received in response to the proposed notice and are considered. In addition, we believe that our definition is appropriate and does include an objective criterion, that is, 15 percent.

Comment: Three commenters suggested that the definition of grossly excessive or grossly deficient clearly indicate that all available data sources will be evaluated before we make an inherent reasonableness determination and that a single non-Medicare payor's payment amounts for an item would not be used to establish a Medicare payment amount using inherent reasonableness authority. The commenters indicated that the wide variation among the various sources available for price data warrants the evaluation of all sources before making any inherent reasonableness determination.

Response: We do not believe that it is necessary to modify our definition of grossly excessive and grossly deficient as the commenters suggested. Section 1842(b)(8) of the Act provides that comparing Medicare payments made by other purchasers is an appropriate way to determine whether or not Medicare payment amounts are reasonable. Section 405.502(g)(4) of the regulations was added in response to a GAO recommendation to ensure the use of valid and reliable data in making an inherent reasonableness determination. Under this regulation, CMS and its carriers must meet 11 criteria, to the extent they are applicable, in determining whether a payment amount is grossly excessive or deficient. For these reasons, the use of prices from a single payor would not be used to determine Medicare's payment amounts.

Comment: Three commenters stated that the definition of grossly excessive or grossly deficient must ensure that Medicare's policy of affording beneficiaries choices among a wide selection of services, products, and brands is retained.

Response: We do not believe that using the inherent reasonableness authority will limit beneficiaries' choices of Medicare items and services because the purpose of the authority is to ensure that Medicare makes payments that are realistic and equitable, and better reflect market prices. If a payment amount is adjusted upward because it is deficient, it will benefit suppliers and beneficiaries. A more generous payment amount may result in greater availability of items and services to Medicare beneficiaries. If the payment amount is adjusted downward, the lower payment amount should not necessarily result in a lack of availability of items and services because the revised payment amount would be realistic and equitable. We believe that a realistic and equitable payment amount would ensure continued availability of items and services. Thus, we believe that the application of an adjustment will merely serve as a vehicle for eliminating excessive profits. An adjustment would benefit the Medicare program by reducing costs and benefit beneficiaries by reducing coinsurance payments. Moreover, we will monitor all complaints from beneficiaries, suppliers, providers, and others regarding patient access to items and services for which payment amounts may be adjusted using the inherent reasonableness process.

Comment: One commenter believed it was inappropriate to set the threshold at 15 percent to define a grossly excessive or deficient payment amount for certain orthotics and prosthetics. The commenter stated that these items are highly customized, vary in complexity based on the patient, are priced differently by manufacturers based on various factors, and require extensive labor and skill to manufacturer them. The commenter suggested that CMS increase the threshold from 15 percent to 20 percent for orthotics and prosthetics.

Response: While the statute does not define what constitutes a grossly excessive or deficient payment amount, it nevertheless places significant importance on a 15-percent criterion. For this reason, we believe that it is appropriate to adopt and apply a 15-percent criterion consistently to all Medicare Part B items and services, including orthotics and prosthetics.

Comment: Fifteen commenters were concerned that applying the definition of grossly excessive to payment amounts for Medicare Part B chemotherapy drugs administered in physicians' offices will greatly impede beneficiaries' access to care, force physicians to abandon their oncology practices, and completely undermine the efficacy of cancer care in this country.

Response: We are aware that oncologists and cancer patients continue to raise concerns about access to chemotherapy. Effective January 1, 2004, section 303 of Public Law 108–173 established a new pricing methodology for drugs and biologicals that are not paid on a cost or prospective payment system basis. It also increased the physician fee schedule amounts for chemotherapy drug administration services. In addition, for 2005 CMS initiated a demonstration in which providers were reimbursed for measuring and providing data on patient outcomes in three areas of concern often cited by patients undergoing chemotherapy: Controlling pain, minimizing nausea and vomiting, and reducing fatigue. Following extensive discussions with various groups representing the interests of oncologists and advocates for patient care, we decided to retain the demonstration project for 2006, but we will revise the codes for reporting in order to take a further step toward encouraging quality care and promoting best clinical practices that should lead to improved patient outcomes. We will eliminate the CY 2005 codes specific to the assessment of patient symptoms, while maintaining our focus on quality cancer care, including the management of debilitating symptoms, to assure the best possible quality of life for cancer patients. At this time, we do not have evidence to suggest that access problems have occurred as a result of the payment policy changes enacted by Public Law 108–173. Office-based chemotherapy care appears to be continuing at historical levels. We will continue to monitor patient access closely.

As we stated previously, we have decided not to subject Part B drugs paid under a prospective payment system such as the hospital outpatient prospective payment system to the inherent reasonableness provisions. In addition, because of the recent legislative changes in payment for Part B covered drugs, including chemotherapy drugs, we do not anticipate an immediate need to apply the inherent reasonableness authority to Part B drugs, but we are retaining our authority for these drugs in the future should the need arise.

B. Use of Valid and Reliable Data

In the December 2002 interim final rule, we revised the regulation to include a new section that provided a methodology taken from the GAO report to ensure the use of valid and reliable data in making an inherent reasonableness determination (§ 405.502(g)(4)). Because the GAO found that the carriers did not use consistent methods to collect and analyze pricing data and did not develop written guidelines for data collection and analysis, in the December 13, 2002 interim final rule, we included in the regulations at § 405.502(g)(4) the following 11 steps to be completed:

- Developing written guidelines for data collection and analysis.
- Ensuring consistency in any survey to collect and analyze pricing data.
- Developing a consistent set of survey questions to use when requesting retail prices.
- Ensuring that sampled prices fully represent the range of prices nationally.
- Considering the geographic distribution of Medicare beneficiaries.
- Considering relative prices in the various localities to ensure that an appropriate mix of areas with high, medium, and low consumer prices was included.
- Considering criteria to define populous State, less populous State, urban area, and rural area.
- Considering a consistent approach in selecting retail outlets within selected cities.
- Considering whether the distribution of sampled prices from localities surveyed is fully representative of the distribution of the U.S. population.
- Considering the products generally used by beneficiaries and collecting prices of these products.
- When using wholesale costs, considering the cost of the services necessary to furnish a product to beneficiaries.

In addition, based on the GAO concerns about the carriers' price survey, the durable medical equipment regional carriers (DMERCs) did not finalize their September 1998 proposed adjustments because the methodology used by the carriers' for making the proposed adjustments did not reflect our revised regulatory criteria, based on recommendations by GAO, for making inherent reasonableness determinations. Likewise, we did not finalize the CMS inherent reasonableness proposals that were published in August 1999 because the methodology used for making the proposed adjustments also did not reflect the revised criteria recommended by GAO and adopted in the December 13, 2002 interim final rule.

We indicated that, in some instances, it may be appropriate to use cost rather than retail or wholesale prices in determining whether a payment amount is grossly excessive or deficient. In those instances in which we use cost data, we consider all costs of the supplier, that is, both direct and indirect costs, as well as any service component costs.

As mentioned previously, section 223(b) of the BBRA required that, in publishing a final regulation on inherent reasonableness, the Secretary take appropriate steps to ensure the use of valid and reliable data when exercising inherent reasonableness authority. The 11 criteria specified above in the December 13, 2002 interim final rule define the steps we will take to ensure the use of valid and reliable data. We specifically solicited public comments on these criteria. The comments we received and our responses appear below.

Comment: One commenter, representing family physicians, family practice residents, and medical students, supported CMS' data collection methods for obtaining valid and reliable data for making inherent reasonableness determinations. However, another commenter believed that implementation of the inherent reasonableness regulation should be delayed until further research data are produced that depict the full range of socioeconomic and medical effects of payment adjustments. The commenter believed that a full research study that includes the results of these effects would have a better outcome on CMS' implemented decisions for reimbursement of oncology services.

Response: We appreciate the commenter's support. In response to the suggestion that we delay implementation of the inherent reasonableness authority until research study results are available that assess the impact of payment adjustments made using the inherent reasonableness process on payment for oncology services, we do not believe that such a delay is warranted and would be beneficial. As previously mentioned, because of the recent legislative changes under Public Law 108–173 in payment for Part B drugs not subject to a prospective payment system, we do not now anticipate needing to apply the inherent reasonableness authority to these drugs, although we are retaining this authority should the need arise. Public Law 108–173 also increased the physician fee schedule amounts for chemotherapy drug administration services.

Comment: Some commenters commended CMS for implementing the GAO recommendations. Other commenters suggested that CMS withdraw the inherent reasonableness rule until CMS sets forth valid and reliable data to assess reasonableness in the establishment of Medicare payment amounts. One commenter believed that the provision of § 405.502(g)(2)(i) that grants CMS or its carriers the authority to identify a ''price markup'' in the absence of verifiable data does not coincide with the GAO intent and contradicts the GAO recommendation that CMS'' decisions should be based on valid and reliable data.

Response: The regulations themselves do not make an inherent reasonableness determination, nor do they contain data upon which such a determination would be based. Rather, the regulations provide a methodology to ensure the use of valid and reliable data in making an inherent reasonableness determination. With regard to the use of the valid and reliable data criteria, these criteria were adopted in their entirety from the GAO report and, thus, properly reflect the GAO's intent and recommendations.

Comment: Several commenters stated that the regulation text containing the guidelines for data collection concerning retail and wholesale pricing surveys is vague; the text lacks specific criteria (for example, parameters for data collection and analysis) that link the data collection to the determination of the payment adjustments. The commenters believed that the criterion set forth for the data sample will not appropriately depict a ''valid and reliable'' data set. Two commenters pointed out that, although the inherent reasonableness rule clearly identifies geographic distribution in its data analysis, CMS failed to identify and define the measurable criteria for consideration of the involved geographic areas. The commenters suggested that CMS consider another survey methodology that includes

clearer and statistically sound techniques for collecting the data.

Response: We believe that § 405.502(g)(4) of the regulations appropriately sets forth the steps that we will take to ensure the use of valid and reliable data when exercising inherent reasonableness authority. We believe that it is impractical to adopt in regulations the level of specificity for data suggested by the commenters because the inherent reasonableness authority is applied to a wide array of Medicare Part B items and services and under an array of different marketing conditions.

Comment: Several commenters stated that drug ''acquisition cost'' is not the true estimated measurement for the inflation of chemotherapy drug cost. The commenters believed that there are additional factors that CMS should take into account, such as facility overhead, procurement, and production cost. One commenter recommended that CMS use data that reflect technological advances. The commenter pointed out that as its company discovers new technological advances for cancer treatment, it alters the total cost of a drug therapy and that under the current policy CMS would not be able to capture these most current data set that would correlate with drug therapy technological advances and the most current drug therapy costs.

Response: As previously stated in section II.A. of this final rule, we have decided not to subject Part B drugs paid under a prospective payment system such as the hospital outpatient prospective payment system to the inherent reasonableness provisions. In addition, because of the recent legislative changes under Public Law 108–173 in payment for Part B drugs not subject to a prospective payment system, we do not now anticipate needing to apply the inherent reasonableness authority to these drugs, although we are retaining our authority should the need arise.

We recognize that there are costs associated with procuring drugs beyond the actual ingredient cost such as shipping. In the event that the inherent reasonableness authority were applied to Part B drugs, we would consider these costs to the extent that they are not already reimbursed through our drug administration payments.

Comment: Several commenters stated that major differences exist between the various health care payment programs and the Medicare program and suggested that CMS assure that the proposed use of payment data from the Veterans Administration (VA), the Medicaid program, and volume discounted programs in making inherent reasonableness determinations does not result in unreliable, flawed data.

The commenters believed that the VA payment data are not valid or reliable for inherent reasonableness determinations under Medicare because the VA payment system requires VA to act as a provider and a distributor, while the Medicare payment system provides payments to individual providers and suppliers for the provision of services. Therefore, the commenter believed that the VA pricing is not an appropriate comparison for data analysis to determine payment for drug rates. One commenter stated that the Medicaid payment system has fixed rates and percentages for certain States and that these prearranged payment amounts would cause the data set to be skewed for purposes of inherent reasonableness determinations. The commenters disagreed with CMS' decision to include small businesses with small purchases in the data set for volume discounts with large businesses with large purchase volumes without CMS considering the difference in volume purchase commitments. The commenters believed that this is just one of the many fundamental differences between the VA and Medicare that would result in drastic differences in the cost of items and services. One commenter submitted data that compared the prices of motorized wheelchairs for Medicare Part B claims to the same products purchased by the VA and the results of its research study which, the commenter believed, prove that the CMS methodology is unreliable.

Several commenters suggested that, because the purchasers' administrative costs are atypical of Medicare claims, CMS should either use the volume discounted data for specific categories or use the pricing data for analyses after carefully examining the data for validity and eliminating invalid data.

Response: While the statute generally does not give CMS the authority to negotiate volume discounts with suppliers, it also does not permit CMS to subsidize the discounts that suppliers grant to other purchasers. CMS' charge is to calculate a fair and equitable payment amount, not to underwrite suppliers' profitability. Medicare is the largest volume purchaser for many medical items and services. As a payer, Medicare expenditures represent 17.6 percent of total national health expenditures by all payers. Expenditures for Part B, excluding physicians' services, are approximately $60 billion per year. Although Medicare does not give specific volume guarantees to suppliers and does not ask for volume discounts, there is a predictable volume of Medicare business, and suppliers have the opportunity to profit from this. To suggest that Medicare's payment be higher than other purchasers' payment in light of the large Medicare volume is unwarranted. Logically, it does not follow that a large purchaser such as Medicare should be expected to pay more than other smaller purchasers.

Comment: Several commenters who supported the 11 criteria that CMS or its contractors will use to make grossly excessive and grossly deficient inherent reasonableness determinations suggested that ''median retail pricing data'' should also be a part of the evaluating criteria; and that CMS define ''retail'' as the term relates to the 11 criteria. The commenters recommended that CMS consider the frequency by which patients utilize various products. The commenters pointed out that products used more frequently are generally lower in price than products that are not used frequently and further added that the use of the reduced retail prices of products used by most beneficiaries would not conform to the valid and reliable data criterion. The commenters also suggested that CMS expand the survey to include products used by non-Medicare patients in an effort to eliminate a biased data set.

Response: We do not believe that median pricing data must be used to ensure that data are valid and reliable. The selection of a median may be used as a measure of the reasonableness of a price and, if it were used, would be discussed in further detail in the public notice when CMS or its carriers elect to make an inherent reasonableness determination. ''Retail'' has the standard dictionary meaning, and we see no reason to further define it in regulation. With regard to the rates at which products are consumed, regulations already provide that we consider the rate at which the product is generally used by beneficiaries.

Further, products used less frequently are also considered in the regulations, which provide that prices must represent the range of prices nationally and that prices must consider an appropriate mix of prices. In order to make like comparisons, we do not believe we should compare products used by Medicare beneficiaries to the types of products used by non-Medicare patients.

Comment: One commenter opposed CMS' and its contractors' use of research data from outside of the United States

because of the difference in pricing systems.

Response: At the present time, we do not anticipate using data from outside the United States but, if we do, we would take into account legitimate pricing differences.

Comment: One commenter recommended that CMS provide and make available, possibly on the Internet, the full research study that entails the criteria, surveys, and resulting data utilized by CMS and its contractors in making inherent reasonableness determinations.

Response: The regulations provide great specificity regarding the criteria and data that are to be used in making inherent reasonableness determinations and great specificity regarding public notice of such determinations. It is our intention to publish all data used in making determinations in any proposed notice. In the future, we also anticipate publishing data on the Internet.

C. Other Provisions Addressed in the December 13, 2002 Interim Final Rule

In the December 13, 2002 interim final rule, we addressed the public comments that we had received on the January 7, 1998 interim final rule. In response to comments on the January 7, 1998 interim final rule, we made the following other changes in the December 13, 2002 interim final rule:

- We clarified the difference between a national determination and a carrier determination (§ 405.502(g)(1)(iii)). We also revised § 405.502(g)(3) to provide further clarification on the terms we use to distinguish between inherent reasonableness activities conducted by CMS and inherent reasonableness activities conducted by the carriers.
- We included an example of new technology that exists and is not reflected in the existing payment allowance (§ 405.502(g)(2)(vii)(H)).
- We clarified language to provide suppliers the opportunity to comment on a carrier's proposed inherent reasonableness payment allowances as well as the factors a carrier considered; and added a requirement that a carrier notify us in writing of any final limits it proposes to establish (§ 405.502(g)(3)(ii)).
- We added language to provide that, when payment adjustments of more than 15 percent are spread out over multiple years, subsequent adjustments will be reviewed for their appropriateness (§ 405.502(g)(5)). As recommended in the GAO report, when adjustments of more than 15 percent are spread out over multiple years, we will review market prices in the years subsequent to the year that the initial 15-percent reduction is effective. The purpose of this review is to ensure that further reductions continue to be appropriate.
- We revised § 405.502(g)(3)(ii) to clarify the procedures and the sequence of steps a carrier will follow in making an inherent reasonableness determination.

In this **Federal Register** document, we are finalizing, with minor editorial changes, the above revisions that were included in the December 13, 2002 interim final rule.

D. Other Issues Addressed in the Public Comments Received

Some of the timely correspondence received in response to the December 13, 2002 interim final rule included public comments on issues other than the two provisions on which we particularly invited additional public comments. These included comments on application of inherent reasonableness authority to ambulance services paid on a fee schedule basis; application of inherent reasonableness authority to oncology drugs administered in physicians' offices; use of current profit margins from oncology drugs administered in physicians' offices to subsidize certain oncology services; impact of inherent reasonableness policy on community oncologists; impact of inherent reasonableness policy on cancer patients' access to care; use of acquisition cost as a factor in determining inherently unreasonable oncology drug costs; application of inherent reasonableness policy to nonpass-through drugs and biologicals paid under the hospital outpatient prospective payment system; use of a comprehensive rather than isolated approach to implementing inherent reasonableness policy changes for oncology drugs administered in physicians' offices; consideration of a Congressionally-driven balanced solution for implementing inherent reasonableness policy changes; seeking the advice of key industry associations prior to implementing inherent reasonableness policy changes for oncology drugs administered in physicians' offices; and reaction to the quality of analysis included in the GAO report. Because these comments pertain to issues on which we had previously received and considered public comment, we consider them outside the scope of the solicitation of public comments on the interim final rule. Therefore, we are not addressing them in this final rule. We will consider them in development of future policy changes. We also refer the readers to the related public comments we addressed in the December 13, 2002 interim final rule.

E. Adoption of December 13, 2002 Interim Final Rule as Final

After analysis of the public comments received, we have determined that no further changes, other than minor editorial and drafting changes, are necessary to the regulations under § 405.502(g) and (h) relating to inherent reasonableness determinations. These changes are editorial in nature or involve coding and language changes to conform to established CFR drafting rules. The provisions of the December 13, 2002 interim final rule are finalized, effective 60 days after the publication date of this document in the **Federal Register**.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

A. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This regulation has no immediate economic effect on current Medicare payments. However, it establishes a process that could be used in the future to set reasonable and equitable payment amounts. Because this rule does not include any actual inherent reasonableness determinations, it has no immediate impact on Medicare payment amounts. However, we believe that the

future application of the inherent reasonableness authority has the potential to have significant impact on Medicare payment amounts. Therefore, this final rule is considered to be economically significant and is a major rule. We base our belief on the June 2002 OIG report that indicated that Medicare may be overpaying between $130 million and $958 million per year for 16 items of medical equipment. In addition, the GAO indicated that Medicare may be overpaying for medical equipment by more than 20 percent. However, these reports were not done to the specifications we are finalizing in this rule and, therefore, they may not be an accurate estimate of the specific dollar impact that could result from the future application of inherent reasonableness under these requirements. Because we recognize the potential for future payment adjustments, either upward or downward, when CMS makes adjustments we will publish in the **Federal Register** regulatory impact statements that will comply with Executive Order 12866 and the Regulatory Flexibility Act whenever the dollar impact of inherent reasonableness determinations exceed $100 million in any 1 year.

At this time, we lack sufficient data to conduct a quantitative analysis of the impact of this rule. We lack such data because, until we are able to conduct an inherent reasonableness study using the published criteria, we are unable to determine whether Medicare is overpaying or underpaying for items or services and to what degree. We do not know if, or when, or for which services, we would make payment adjustments, or the percentage adjustment we would make, or even the particular industry that would be affected. In addition, we do not know if these adjustments would increase or decrease Medicare payment amounts. As a result, we cannot anticipate the specific dollar effect or impact on suppliers and beneficiaries.

B. Regulatory Flexibility Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year (see 65 FR 69432 for details). For purposes of the RFA, all suppliers of Medicare Part B services are considered to be small entities. Individuals and States are not included in the definition of a small entity. Because this final rule does not include any actual inherent reasonableness determinations, it will not have an impact on small businesses. However, it finalizes the establishment of a process that could be used in the future to establish reasonable and equitable payment amounts.

We do not expect suppliers of Part B services to be immediately affected by this rule because the rule will have no immediate impact on Medicare payment amounts. However, we do believe that use of inherent reasonableness has the potential to significantly impact small businesses in the future. This belief is based on a June 2002 OIG report cited earlier which indicated that Medicare may be overpaying between $130 million and $958 million per year for 16 items of medical equipment. In addition, the GAO indicated that Medicare may be overpaying for medical equipment by more than 20 percent. However, we are still unable to predict the specific dollar impact on the future application of inherent reasonableness. Because we recognize the potential for future payment adjustments, either upward or downward, when CMS makes adjustments, we will publish in the **Federal Register** impact statements that will comply with Executive Order 12866 and the Regulatory Flexibility Act whenever the dollar impact of inherent reasonableness determinations exceed $100 million in any 1 year, or when the adjustments will have a significant impact on a substantial number of small entities.

We do not have sufficient data to predict exactly the nature of the future impact of this rule or the magnitude of the impact. Below, we discuss likely outcomes. Should the provisions of these regulations be applied, the resultant payment amounts will no longer be grossly excessive or deficient. If a payment amount is adjusted upward because it is deficient, it will benefit suppliers and beneficiaries. A more generous payment amount may result in greater availability of items and services to Medicare beneficiaries. If the payment amount is adjusted downward, a lower payment amount should not necessarily result in a lack of availability of items and services because the revised payment amount would be realistic and equitable and would better reflect market prices for the given item or service. We believe that a realistic and equitable payment amount would ensure continued availability of items and services. This adjustment would benefit the Medicare program by reducing costs, thereby protecting the Medicare Trust Fund, and benefit beneficiaries by reducing coinsurance payments. In addition, this regulation only specifies the criteria and methodology for determining when payment for a service or item is inherently unreasonable and does not result in any adjustments.

If CMS initiates an inherent reasonableness determination that results in payment adjustments in excess of $100 million in any 1 year, we will publish in the **Federal Register** an analysis in compliance with Executive Order 12866. If the CMS adjustment will have a significant impact on a substantial number of small entities, we will also conduct an analysis in accordance with the Regulatory Flexibility Act. In cases where one or more of our carriers undertake an adjustment using this inherent reasonableness authority that either has an impact of $100 million or more in any 1 year or has a significant effect on a substantial number of small entities, the carrier(s) will notify providers of the planned adjustment and the analysis on which it is based. In this way, affected parties would be able to comment on the planned adjustment.

C. Impact on Rural Areas

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing a rural impact analysis because we have determined that this final rule will not have a significant economic impact on the operation of a substantial number of small rural hospitals.

D. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal government, in the aggregate, or by the private sector of $110 million. This final rule does not mandate expenditures by State, local, or tribal governments, or by the private sector. Therefore, the requirements of section 202 do not apply.

E. Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed

rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

F. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

■ For the reasons set forth in the preamble, 42 CFR chapter IV, part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determining Reasonable Charges

■ 1. The authority citation for part 405, subpart E, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 405.502 is amended by revising paragraphs (g) and (h) to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(g) *Determination of payment amounts in special circumstances.*—(1) *General.*

(i) For purposes of this paragraph (g), a ''category of items or services'' may consist of a single item or service or any number of items or services.

(ii) CMS or a carrier may determine that the standard rules for calculating payment amounts set forth in this subpart for a category of items or services identified in section 1861(s) of the Act (other than physicians' services paid under section 1848 of the Act and those items and services for which payment is made under a prospective payment system, such as outpatient hospital services or home health services) will result in grossly deficient or excessive amounts. A payment amount will not be considered grossly excessive or deficient if it is determined that an overall payment adjustment of less than 15 percent is necessary to produce a realistic and equitable payment amount. For CMS-initiated adjustments, CMS will publish in the **Federal Register** an analysis of payment adjustments that exceed $100 million per year in compliance with Executive Order 12866. If CMS makes adjustments that have a significant effect on a substantial number of small entities, it will publish an analysis in compliance with the Regulatory Flexibility Act.

(iii) If CMS or the carrier determines that the standard rules for calculating payment amounts for a category of items or services will result in grossly deficient or excessive amounts, CMS, or the carrier, may establish special payment limits that are realistic and equitable for a category of items or services. If CMS makes a determination, it is considered a national determination. A carrier determination is one made by a carrier or intermediary or groups of carriers or intermediaries even if the determination applies to payment in all States.

(iv) The limit on the payment amount is either an upper limit to correct a grossly excessive payment amount or a lower limit to correct a grossly deficient payment amount.

(v) The limit is either a specific dollar amount or is based on a special method to be used in determining the payment amount.

(vi) Except as provided in paragraph (h) of this section, a payment limit for a given year may not vary by more than 15 percent from the payment amount established for the preceding year.

(vii) *Examples of excessive or deficient payment amounts.* Examples of the factors that may result in grossly deficient or excessive payment amounts include, but are not limited to, the following:

(A) The marketplace is not competitive. This includes circumstances in which the marketplace for a category of items or services is not truly competitive because a limited number of suppliers furnish the item or service.

(B) Medicare and Medicaid are the sole or primary sources of payment for a category of items or services.

(C) The payment amounts for a category of items or services do not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.

(D) The payment amounts for a category of items or services in a particular locality are grossly higher or lower than payment amounts in other comparable localities for the category of items or services, taking into account the relative costs of furnishing the category of items or services in the different localities.

(E) Payment amounts for a category of items or services are grossly higher or lower than acquisition or production costs for the category of items or services.

(F) There have been increases in payment amounts for a category of items or services that cannot be explained by inflation or technology.

(G) The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

(H) A new technology exists which is not reflected in the existing payment allowances.

(2) *Establishing a limit.* In establishing a payment limit for a category of items or services, CMS or a carrier considers the available information that is relevant to the category of items or services and establishes a payment amount that is realistic and equitable. The factors CMS or a carrier considers in establishing a specific dollar amount or special payment method for a category of items or services may include, but are not limited to, the following:

(i) *Price markup.* Price markup is the relationship between the retail and wholesale prices or manufacturer's costs of a category of items or services. If information on a particular category of items or services is not available, CMS or a carrier may consider the price markup on a similar category of items or services and information on general industry pricing trends.

(ii) *Differences in charges.* CMS or a carrier may consider the differences in charges for a category of items or services made to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iii) *Costs.* CMS or a carrier may consider resources (for example, overhead, time, acquisition costs, production costs, and complexity) required to produce a category of items or services.

(iv) *Use.* CMS or a carrier may impute a reasonable rate of use for a category of items or services and consider unit costs based on efficient use.

(v) *Payment amounts in other localities.* CMS or a carrier may consider payment amounts for a category of items or services furnished in another locality.

(3) *Notification of limits.*—(i) *National limits.* CMS publishes in the **Federal Register** proposed and final notices announcing a special payment limit described in paragraph (g) of this section before it adopts the limit. The notices set forth the criteria and

circumstances, if any, under which a carrier may grant an exception to a payment limit for a category of items or services.

(ii) *Carrier-level limits.* (A) A carrier proposing to establish a special payment limit for a category of items or services must inform the affected suppliers and Medicaid agencies of the proposed payment amounts and the factors it considered in proposing the particular limit, as described in paragraphs (g)(1) through (g)(4) of this section and must solicit comments. The notice must also consider the following:

(*1*) The effects on the Medicare program, including costs, savings, assignment rates, beneficiary liability, and quality of care.

(*2*) What entities would be affected, such as classes of providers or suppliers and beneficiaries.

(*3*) How significantly would these entities be affected.

(*4*) How would the adjustment affect beneficiary access to items or services.

(B) Before publication of a final notice, the carrier must—

(*1*) Evaluate the comments it receives on the proposed notice.

(*2*) Notify CMS in writing of any final limits it plans to establish. CMS will acknowledge in writing to the carrier that it received the carrier's notification.

(*3*) After receipt of CMS' acknowledgement, inform the affected suppliers and State Medicaid agencies of any final limits it establishes.

(C) The effective date for a final payment limit may apply to services furnished at least 60 days after the date that the carrier notifies affected suppliers and State Medicaid agencies of the final limit.

(4) *Use of valid and reliable data.* In determining whether a payment amount is grossly excessive or deficient and in establishing an appropriate payment amount, valid and reliable data are used. To ensure the use of valid and reliable data, CMS or the carrier must meet the following criteria to the extent applicable:

(i) Develop written guidelines for data collection and analysis.

(ii) Ensure consistency in any survey to collect and analyze pricing data.

(iii) Develop a consistent set of survey questions to use when requesting retail prices.

(iv) Ensure that sampled prices fully represent the range of prices nationally.

(v) Consider the geographic distribution of Medicare beneficiaries.

(vi) Consider relative prices in the various localities to ensure that an appropriate mix of areas with high, medium, and low consumer prices was included.

(vii) Consider criteria to define populous State, less populous State, urban area, and rural area.

(viii) Consider a consistent approach in selecting retail outlets within selected cities.

(ix) Consider whether the distribution of sampled prices from localities surveyed is fully representative of the distribution of the U.S. population.

(x) Consider the products generally used by beneficiaries and collect prices of these products.

(xi) When using wholesale costs, consider the cost of the services necessary to furnish a product to beneficiaries.

(5) *Review of market prices.* If CMS or a carrier makes a payment adjustment of more than 15 percent under this paragraph (g), CMS or the carrier will review market prices in the years subsequent to the year that the initial reduction is effective in order to ensure that further reductions continue to be appropriate.

(h) *Special payment limit adjustments greater than 15 percent of the payment amount.* In addition to applying the general rules under paragraphs (g)(1) through (g)(5) of this section, CMS applies the following rules in establishing a payment adjustment greater than 15 percent of the payment amount for a category of items or services within a year:

(1) *Potential impact of special limit.* CMS considers the potential impact on quality, access, beneficiary liability, assignment rates, and participation of suppliers.

(2) *Supplier consultation.* Before making a determination that a payment amount for a category of items or services is not inherently reasonable by reason of its grossly excessive or deficient amount, CMS consults with representatives of the supplier industry likely to be affected by the change in the payment amount.

(3) *Publication of national limits.* If CMS determines under this paragraph (h) to establish a special payment limit for a category of items or services, it publishes in the **Federal Register** the proposed and final notices of a special payment limit before it adopts the limit. The notices set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the limit for the category of items or services.

(i) *Proposed notice.* The proposed notice—

(A) Explains the factors and data that CMS considered in determining that the payment amount for a category of items or services is grossly excessive or deficient;

(B) Specifies the proposed payment amount or methodology to be established for a category of items or services;

(C) Explains the factors and data that CMS considered in determining the payment amount or methodology, including the economic justification for a uniform fee or payment limit if it is proposed;

(D) Explains the potential impacts of a limit on a category of items or services as described in paragraph (h)(1) of this section; and

(E) Allows no less than 60 days for public comment on the proposed payment limit for the category of items or services.

(ii) *Final notice.* The final notice—

(A) Explains the factors and data that CMS considered, including the economic justification for any uniform fee or payment limit established; and

(B) Responds to the public comments.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: June 13, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 1, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–24020 Filed 12–12–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7455]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to

this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Mitigation Division, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities.

The changes BFEs are in accordance with 44 CFR 65.4.

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

Regulatory Flexibility Act. The Mitigation Division Director for the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case number	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alabama: Tuscaloosa.	City of Northport, (04–04–B101P).	November 9, 2005, November 16, 2005; *Northport Gazette*.	The Honorable Harvey Fretwell, Mayor, City of Northport, City Hall, 3500 McFarland Boulevard, Northport, Alabama 35476.	February 15, 2006	010202
Arkansas: Craighead.	City of Jonesboro, (05–06–1627P).	October 12, 2005, October 19, 2005; *Jonesboro Sun*.	The Honorable Doug Forman, Mayor, City of Jonesboro, City Hall, 515 West Washington Avenue, Jonesboro, Arkansas 72401.	January 18, 2006	050048
Arkansas: Washington.	City of Fayetteville, (05–06–0478P).	July 21, 2005, July 28, 2005; *Arkansas Democrat Gazette*.	The Honorable Dan Coudy, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.	October 27, 2005	050216
Arizona: Coconino	City of Flagstaff, (04–09–1242P).	June 9, 2005, June 16, 2005; *Arizona Daily Sun*.	The Honorable Joseph C. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	September 15, 2005.	040020
Arizona: Coconino	City of Flagstaff, (04–09–0997P).	October 12, 2005, October 19, 2005; *Arizona Daily Sun*.	The Honorable Joseph C. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	January 18, 2006	040020
Arizona: Coconino	Unincorporated areas of Coconino, (04–09–0997P).	October 12, 2005, October 19, 2005; *Arizona Daily Sun*.	The Honorable Elizabeth Archuleta, Chair, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, Arizona 86001.	January 18, 2006	040019

State and county	Location and case number	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona: Maricopa	City of Avondale, (04–09–0933P).	May 26, 2005, June 2, 2005; *Arizona Business Gazette*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	May 17, 2005	040038
Arizona: Maricopa	City of Fountain Hills, (03–09–1143P).	May 19, 2005, May 26, 2005; *The Tribune*.	The Honorable Wallace Nichols, Mayor, Town of Fountain Hills, P.O. Box 17958, Fountain Hills, Arizona 85269.	August 25, 2005 ..	040135
Arizona: Maricopa	City of Peoria, (05–09–1137P).	July 7, 2005, July 14, 2005; *Arizona Business Gazette*.	The Honorable John Keegan, Mayor, City of Peoria, City of Peoria Municipal Complex, 8401 West Monroe Street, Peoria, Arizona 85345.	October 12, 2005	040050
Arizona: Maricopa	City of Phoenix, (04–09–0933P).	May 26, 2005, June 2, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	May 17, 2005	040051
Arizona: Maricopa	City of Phoenix, (05–09–0164P).	September 22, 2005, September 29, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	December 29, 2005.	040051
Arizona: Maricopa	City of Phoenix, (05–09–0700P).	October 6, 2005, October 13, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	January 12, 2006	040051
Arizona: Maricopa	Unincorporated Areas, (04–09–0933P).	May 26, 2005, June 2, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	May 17, 2005	040037
Arizona: Maricopa	Unincorporated Areas, (05–09–1137P).	July 7, 2005, July 14, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	October 12, 2005	040037
Arizona: Maricopa	Unincorporated Areas, (05–09–0236P).	August 4, 2005, August 11, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	November 10, 2005.	040037
Arizona: Maricopa	Unincorporated Areas, (05–09–0159P).	October 6, 2005, October 13, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	September 27, 2005.	040037
Arizona: Pima	Town of Marana, (05–09–0118P).	July 19, 2005, July 26, 2005; *The Daily Territorial*.	The Honorable Bobby Sutton, Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653.	October 25, 2005	040118
Arizona: Pima	Unincorporated Areas, (05–09–0118P).	July 19, 2005, July 26, 2005; *The Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	October 25, 2005	040073
Arizona: Santa Cruz.	City of Nogales, (04–09–0303P).	May 10, 2005, May 17, 2005; *Nogales International*.	The Honorable Albert M. Kramer, Mayor, City of Nogales, City Hall, 777 North Grand Avenue, Nogales, Arizona 85621.	August 16, 2005 ..	040091
California: Alameda.	City of Alameda, (05–09–1010P).	September 21, 2005, September 28, 2005; *Daily Journal Alameda Times Star*.	The Honorable Beverly Johnson, Mayor, City of Alameda, 2263 Santa Clarita Avenue, Room 320, Alameda, California 94501.	December 28, 2005.	060002
California: Amador	City of Jackson, (05–09–0292P).	June 17, 2005, June 24, 2005; *Amador Ledger Dispatch*.	The Honorable RosaLee Pryor, Mayor, City of Jackson, 33 Broadway, Jackson, California 95642–2301.	June 7, 2005	060448
California: San Diego.	Unincorporated Areas, (05–09–0948P).	August 11, 2005, August 18, 2005; *San Diego Daily Transcript*.	The Honorable Pam Slater-Price, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	November 17, 2005.	060284

State and county	Location and case number	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
California: Solano	City of Fairfield, (03–09–1349P).	July 21, 2005, July 28, 2005; *Daily Republic*.	The Honorable Karin MacMillan, Mayor, City of Fairfield, c/o City Manager's Office, 1000 Webster Street, Fairfield, California 94533.	October 27, 2005	060370
California: Solano	City of Rio Vista, (04–09–1389P).	June 15, 2005, June 22, 2005; *River News-Herald*.	The Honorable James E. Woodruff, Mayor, City of Rio Vista, One Main Street, Rio Vista, California 94571.	June 7, 2005	060371
Colorado: Adams	City of Thornton, (05–08–0281P).	August 5, 2005, August 12, 2005; *Eastern Colorado News*.	The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229.	November 10, 2005.	080007
Colorado: Broomfield.	City of Broomfield, (05–08–0261P).	June 15, 2005, June 22, 2005; *Broomfield Enterprise*.	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	June 9, 2005	085073
Colorado: El Paso	City of Colorado Springs, (05–08–0185P).	September 14, 2005, September 21, 2005; *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	August 30, 2005 ..	080060
Colorado: El Paso	Unincorporated Areas, (05–08–0459P).	August 24, 2005, August 31, 2005; *El Paso County News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	November 30, 2005.	080059
Colorado: El Paso	Unincorporated Areas, (04–08–0779P).	August 31, 2005, September 7, 2005; *El Paso County News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	December 7, 2005	080059
Colorado: El Paso	Unincorporated Areas, (05–08–0185P).	September 14, 2005, September 21, 2005; *El Paso County News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	August 30, 2005 ..	080059
Colorado: Gilpin ...	City of Black Hawk, (04–08–0678P).	June 24, 2005, July 1, 2005; *Weekly Register-Call*.	The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422.	September 30, 2005.	080076
Colorado: Jefferson.	City of Lakewood, (05–08–0227P).	October 6, 2005, October 13, 2005; *The Golden Transcript*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center, South, 480 South Allison Parkway, Lakewood, Colorado 80226.	January 12, 2006	085075
Colorado: Larimer	Unincorporated Areas, (04–08–0564P).	September 7, 2005, September 14, 2005; *Fort Collins Coloradoan*.	The Honorable Kathay Rennels, Chair, Larimer County, Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.	December 14, 2005.	080101
Colorado: Ouray ...	City of Ouray, (05–08–0297P).	September 2, 2005, September 9, 2005; *Telluride Watch*.	The Honorable Pam Larson, Mayor, City of Ouray, P.O. Box 468, Ouray, Colorado 81472.	December 9, 2005	080137
Colorado: Pitkin	Unincorporated Areas, (05–08–0310P).	August 28, 2005, September 4, 2005; *Aspen Times Weekly*.	The Honorable Patti Kay-Clapper, Chair, Pitkin County Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.	August 15, 2005 ..	080287
Colorado: San Miguel.	Town of Telluride, (05–08–0263P).	November 4, 2005, November 11, 2005; *Telluride Watch*.	The Honorable John Pryor, Mayor, Town of Telluride, P.O. Box 397, Telluride, Colorado 81435.	February 10, 2006	080168
Colorado: San Miguel.	Unincorporated Areas, (05–08–0263P).	November 4, 2005, November 11, 2005; *Telluride Watch*.	The Honorable Art Goodtimes, Chairman, San Miguel County Board of Commissioners, P.O. Box 1170, Telluride, Colorado 81435.	February 10, 2006	080166
Connecticut: Fairfield.	Town of Greenwich, (05–01–0060P).	June 30, 2005, July 7, 2005; *Greenwich Times*.	The Honorable Jim Lash, First Selectman, Town of Greenwich, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	June 15, 2005	090008
Connecticut: Fairfield.	Town of Greenwich, (05–01–0688P).	October 27, 2005, November 3, 2005; *Greenwich Times*.	The Honorable Jim Lash, First Selectman, Town of Greenwich, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	October 11, 2005	090008

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Connecticut: New Haven.	Town of Guilford, (05–01–0245P).	June 8, 2005, June 15, 2005; *The New Haven Register*.	The Honorable Charles ''Gene'' Bishop, First Selectman, Office of the Board of Selectmen, Town of Guilford, 31 Park Street, Guilford, Connecticut 06437.	May 23, 2005	090077
Connecticut: New Haven.	Town of Guilford, (05–01–0578P).	November 3, 2005, November 10, 2005; *New Haven Register*.	The Honorable Charles ''Gene'' Bishop, First Selectman, Town of Guilford, 31 Park Street, Guilford, Connecticut 06437.	February 9, 2006	090077
Delaware: New Castle.	Unincorporated Areas, (04–03–A042P).	September 8, 2005, September 15, 2005; *News Journal*.	The Honorable Chris A. Coons, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	July 25, 2005	105085
Florida: Duval	City of Jacksonville, (05–04–3653P).	October 10, 2005, October 17, 2005; *Jacksonville Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, City Hall, Fourth Floor, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	January 17, 2006	120077
Florida: Polk	Unincorporated Areas, (05–04–0457P).	June 23, 2005, June 30, 2005; *Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831–9005.	June 13, 2005	120261
Florida: Miami-Dade.	City of Miami, (05–04–1122P).	October 6, 2005, October 13, 2005; *Miami Herald*.	The Honorable Manuel A. Diaz, Mayor, City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	July 22, 2005	120650
Georgia: Bartow ...	City of Cartersville, (05–04–0630P).	August 11, 2005, August 18, 2005; *Daily Tribune News*.	The Honorable Michael G. Fields, Mayor, City of Cartersville, P.O. Box 1390, Cartersville, Georgia 30120.	November 17, 2005.	130209
Georgia: Bartow ...	Unincorporated Areas, (05–04–0630P).	August 11, 2005, August 18, 2005; *Daily Tribune News*.	The Honorable Clarence Brown, Bartow County Commissioner, 135 West Cherokee Avenue, Suite 251, Cartersville, Georgia 30120.	November 17, 2005.	130463
Georgia: Gwinnett	City of Lawrenceville, (05–04–1268P).	August 18, 2005, August 25, 2005; *Gwinnett Daily Post*.	The Honorable Bobby J. Sikes, Mayor, City of Lawrenceville, 70 South Clayton Street, Lawrenceville, Georgia 30045.	November 25, 2005.	130099
Hawaii: Hawaii	Hawaii County, (05–09–0238P).	August 25, 2005, September 1, 2005; *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	December 1, 2005	155166
Illinois: Cook	Village of Inverness, (05–05–0378P).	October 6, 2005, October 13, 2005; *Daily Herald*.	The Honorable John A. Tatooles, Village President, Village of Inverness, 1400 Baldwin Road, Inverness, Illinois 60067.	January 12, 2006	170111
Illinois: Cook	Village of South Barrington, (05–05–0378P).	October 6, 2005, October 13, 2005; *Daily Herald*.	The Honorable Frank Munao, Jr., Village President, Village of South Barrington, 30 South Barrington Road, South Barrington, Illinois 60010.	January 12, 2006	170161
Illinois: Cook	Unincorporated Areas, (05–05–0378P).	October 6, 2005, October 13, 2005; *Daily Herald*.	The Honorable John H. Stroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	January 12, 2006	170054
Illinois: DuPage	Village of Glendale Heights, (05–05–2658P).	June 16, 2005, June 23, 2005; *Daily Herald*.	The Honorable Linda Jackson, Village President, Village of Glendale Heights, 300 Civic Center Plaza, Glendale Heights, Illinois 60139.	June 1, 2005	170206
Illinois: Kane	Village of Pingree Grove, (05–05–0119P).	July 21, 2005, July 28, 2005; *Elburn Herald*.	The Honorable Verne E. Wester, Village President, Village of Pingree Grove, 14 N 042 Reinking Road, Hampshire, Illinois 60140.	October 26, 2005	171078
Illinois: Kane	Unincorporated Areas, (05–05–0119P).	July 21, 2005, July 28, 2005; *Elburn Herald*.	The Honorable Karen McConnaughay, County Board Chairman Kane County, 719 South Batavia Avenue, Building A, Geneva, Illinois 60134.	October 26, 2005	170896

State and county	Location and case number	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Illinois: Will	Village of Frankfort, (05–05–0039P).	May 12, 2005, May 19, 2005; *Daily Southtown*.	The Honorable Raymond E. Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, Illinois 60423.	May 3, 2005	170701
Illinois: Will	Village of Frankfort, (05–05–2646P).	August 11, 2005, August 18, 2005; *Daily Southtown*.	The Honorable Jim Holland, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, Illinois 60423.	July 18, 2005	170701
Illinois: Will	Village of Mokena, (05–05–2180P).	June 16, 2005, June 23, 2005; *Daily Southtown*.	The Honorable Robert Chiszar, Mayor, Village of Moneka, Village Hall, 11004 Carpenter Street, Mokena, Illinois 60448.	June 3, 2005	170705
Illinois: Will	Village of University Park, (05–05–1544P).	November 10, 2005, November 17, 2005; *Daily Southtown*.	The Honorable Alvin McCowan, Mayor, Village of University Park, Village Hall, 698 Burnham Drive, University Park, Illinois 60466.	October 28, 2005	170708
Illinois: Will	Unincorporated Areas, (05–05–3958P).	October 20, 2005, October 27, 2005; *Daily Southtown*.	The Honorable Lawrence M. Walsh, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, Illinois 60432.	January 26, 2006	170695
Illinois: Winnebago	Unincorporated Areas, (05–05–4119P).	October 6, 2005, October 13, 2005; *Rockford Register Star*.	The Honorable Scott H. Christiansen, Chairman, Winnebago County Board, 404 Elm Street, Room 504, Rockford, Illinois 61101.	January 12, 2006	170720
Indiana: Elkhart	City of Goshen, (04–05–A119P).	November 3, 2005, November 10, 2005; *Goshen News*.	The Honorable Allan Kauffman, Mayor, City of Goshen, 202 South Fifth Street, Goshen, Indiana 46528.	November 18, 2005.	180058
Indiana: Elkhart	Unincorporated Areas, (04–05–A119P).	November 3, 2005, November 10, 2005; *Goshen News*.	The Honorable Phil Neff, President, Elkhart County, 117 North Second Street, Goshen, Indiana 46526.	November 18, 2005.	180056
Indiana: Hamilton	Town of Fisher, (05–05–0633P).	September 20, 2005, September 27, 2005; *Noblesville Ledger*.	The Honorable Scott A. Faultless, Town of Council President, Town of Fishers, One Municipal Drive, Fishers, Indiana 46038.	September 9, 2005.	180423
Kansas: Sedgwick	City of Wichita, (04–07–A643P).	September 8, 2005, September 15, 2005; *Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall, First Floor, 455 North Main, Wichita, Kansas 67202.	August 25, 2005 ..	200328
Kansas: Sedgwick	Unincorporated Areas, (04–07–A643P).	September 8, 2005, September 15, 2005; *Wichita Eagle*.	The Honorable Dave Unruh, Chairman, Sedgwick County, Board of Commissioners, 525 North Main, Room 320, Wichita, Kansas 67203.	August 25, 2005 ..	200321
Kentucky: Daviess	City of Owensboro, (05–04–2200P).	August 18, 2005, August 25, 2005; *Messenger-Inquirer*.	The Honorable Tom Watson, Mayor, City of Owensboro, P.O. Box 10003, Owensboro, Kentucky 42301.	July 27, 2005	210063
Maine: Cumberland.	Town of Harpswell, (05–01–0539P).	September 22, 2005, September 29, 2005; *Portland Press Herald*.	The Honorable Gordon L. Weil, Chair, Board of Selectmen, Town of Harpswell, P.O. Box 39, Harpswell, Maine 04079.	September 9, 2005.	230169
Maine: Cumberland.	City of Westbrook, (05–01–0338P).	August 25, 2005, September 1, 2005; *Portland Press Herald*.	The Honorable Bruce Chuluda, Mayor, City of Westbrook, City Hall, Two York Street, Westbrook, Maine 04092.	December 1, 2005	230054
Maryland: Carroll ..	Unincorporated Areas, (05–03–0001P).	June 23, 2005, June 30, 2005; *Carroll County Times*.	The Honorable Julia W. Gouge, President, Carroll County, Board of Commissioners, 225 North Center Street, Westminster, Maryland 21157.	September 29, 2005.	240015
Maryland: Charles	Unincorporated Areas, (05–03–0093P).	October 5, 2005, October 12, 2005; *Maryland Independent*.	The Honorable Wayne Cooper, President, Charles County Commissioners, P.O. Box 2150, La Plata, Maryland 20646.	January 11, 2006	240089
Maryland: Harford	Unincorporated Areas, (05–03–0153P).	August 31, 2005, September 7, 2005; *The Aegis*.	The Honorable David R. Craig, County Executive, Harford County, 220 South Main Street, Bel Air, Maryland 21014.	December 7, 2005	240040
Massachusetts: Barnstable.	Town of Falmouth, (05–01–0294P).	August 25, 2005, September 1, 2005; *Cape Cod Times*.	The Honorable Kevin Murphy, Chairman, Board of Selectmen, Town of Falmouth, Town Hall, 59 Town Hall Square, Falmouth, Massachusetts 02540.	December 1, 2005	255211

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Massachusetts: Nantucket.	Town of Nantucket, (05–01–0428P).	August 25, 2005, September 1, 2005; *Cape Cod Times*.	The Honorable Michael Glowacki, Chairman, Board of Selectmen, Town of Nantucket, Town Building, 16 Broad Street, First Floor, Nantucket, Massachusetts 02554.	December 1, 2005	250230
Michigan: Macomb	Charter Township of Clinton, (04–05–A079P).	August 26, 2005, September 2, 2005; *Macomb County Legal News*.	The Honorable Robert J. Cannon, Supervisor, Charter Township of Clinton, 40700 Romeo Plank Road, Clinton Township, Michigan 48038.	December 2, 2005	260121
Michigan: Macomb	Township of Macomb, (05–05–1849P).	July 15, 2005, July 22, 2005; *Macomb County Legal News*.	The Honorable John D. Brennan, Supervisor, Macomb Township, 54111 Broughton Road, Macomb, Michigan 48042.	July 5, 2005	260445
Michigan: Macomb	Township of Macomb. (04–05–A079P).	August 26, 2005, September 2, 2005; *Macomb County Legal News*.	The Honorable John D. Brennan, Supervisor, Township of Macomb, 54111 Broughton Road, Macomb, Michigan 48042.	December 2, 2005	260445
Michigan: Macomb	Township of Washington, (05–05–0637P).	June 1, 2005, June 8, 2005; *The Romeo Observer*.	The Honorable Gary Kirsh, Supervisor, Township of Washington, P.O. Box 94067, Washington, Michigan 48094–4067.	September 7, 2005.	260447
Michigan: Macomb	Township of Washington, (05–05–0277P).	July 15, 2005, July 22, 2005; *Macomb County Legal News*.	The Honorable Gary Kirsh, Supervisor, Township of Washington, P.O. Box 94067, Washington, Michigan 48094–4067.	July 29, 2005	260447
Michigan: Oakland	City of Troy, (05–05–1312P).	November 3, 2005, November 10, 2005; *Observer & Eccentric*.	The Honorable Louise Schilling, Mayor, City of Troy, 500 West Big Beaver, Troy, Michigan 48084.	October 18, 2005	260180
Michigan: Wayne	Charter Township fo Brownstown, (05–05–2504P).	July 20, 2005, July 27, 2005; *News Herald*.	The Honorable Arthur F. Wright, Supervisor, Charter Township of Brownstown, 21313 Telegraph Road, Brownstown, Michigan 48183.	October 26, 2005	260218
Minnesota: Anoka	City of Blaine, (05–05–1909P).	October 14, 2005, October 21, 2005; *Blaine-Spring Lake Park Life*.	The Honorable Thomas Ryan, Mayor, City of Blaine, 10801 Town Square Drive, Northeast Blaine, Minnesota 55449.	October 4, 2005 ...	270007
Minnesota: Olmsted.	City of Rochester, (05–05–1180P).	June 16, 2005, June 23, 2005; *Post-Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, City Hall, 201 Fourth Street, Southeast Rochester, Minnesota 55904.	September 22, 2005.	275246
Minnesota: Olmsted.	Unincorporated Areas, (05–05–1180P).	June 16, 2005, June 23, 2005; *Post Bulletin*.	Mr. Richard G. Devlin, County Administrator, Olmsted County, 151 Fourth Street Southeast, Rochester, Minnesota 55904.	September 22, 2005.	270626
Missouri: Boone ...	City of Centralia, (04–07–A458P).	September 22, 2005, September 29, 2005; *Columbia Missourian*.	The Honorable Jerry Parmeley, Mayor, City of Centralia, 114 South Rollins, Centralia, Missouri 65240.	March 13, 2006	290035
Missouri: Boone ...	Unincorporated Areas, (04–07–458P).	September 22, 2005, September 29, 2005; *Columbia Missourian*.	The Honorable Keith Schnarre, Presiding Commissioner, Boone County, 801 East Walnut, Room 245, Columbia, Missouri 65201–7732.	September 14, 2005.	290034
Missouri: Jefferson	City of Byrnes Mill, (04–07–A561P).	October 26, 2005, November 2, 2005; *Meramec Suburban Journal*.	The Honorable Timothy Checkett, Mayor, City of Byrnes Mill, 127 Osage Executive Circle, Byrnes Mill, Missouri 63051.	February 1, 2006	290891
Missouri: St. Charles.	Town of Dardenne Prairie, (04–07–A555P).	June 8, 2005, June 15, 2005; *St. Charles Journals*.	The Honorable Pam Fogarty, Mayor, Town of Dardenne Prairie, 2032 Hanley Road, Dardenne Prairies, Missouri 63366.	September 14, 2005.	290889
Missouri: St. Charles.	City of O'Fallon, (04–07–A555P).	June 8, 2005, June 15, 2005; *St. Charles Journals*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.	September 14, 2005.	290316
Missouri: St. Charles.	City of O'Fallon, (05–07–0504P).	August 24, 2005, August 31, 2005; *St. Charles Journals*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.	August 10, 2005 ..	290316
Missouri: St. Charles.	City of O'Fallon, (04–07–A375P).	October 19, 2005, October 26, 2005; *St. Charles Journals*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.	January 18, 2006	290316

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Missouri: St. Charles.	City of St. Peters, (05–07–0504P).	August 24, 2005, August 31, 2005; *St. Charles Journals*.	The Honorable Shawn Brown, Mayor, City of St. Peters, P.O. Box 9, St. Peters, Missouri 63376.	August 10, 2005 ..	290319
Missouri: St. Charles.	Unincorporated Areas, (04–07–A555P).	June 8, 2005, June 15, 2005; *St. Charles Journals*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	September 14, 2005.	290315
Missouri: St. Charles.	Unincorporated Areas, (05–07–0504P).	August 24, 2005, August 31, 2005; *St. Charles Journals*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	August 10, 2005 ..	290315
Missouri: St. Charles.	Unincorporated Areas, (04–07–A375P).	October 19, 2005, October 26, 2005; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	January 18, 2006	290315
Missouri: St. Charles.	Unincorporated Areas, (05–07–0760P).	October 26, 2005, November 2, 2005; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	February 1, 2006	290315
Missouri: St. Charles.	City of Weldon Spring, (04–07–A375P).	October 19, 2005, October 26, 2005; *St. Charles Journal*.	The Honorable Donald D. Licklider, Mayor, City of Weldon Spring, 5401 Independence Road, Weldon Spring, Missouri 63304.	January 18, 2006	290901
Missouri: St. Charles.	City of Wentzville, (05–07–0760P).	October 26, 2005, November 2, 2005; *Wentzville Suburban Journal*.	The Honorable Paul Lambi, Mayor, City of Wentzville, Wentzville City Hall, 310 West Pearce Boulevard, Wentzville, Missouri 63385.	February 1, 2006	290320
Nebraska: Douglas	City of Omaha, (04–07–A438P).	October 6, 2005, October 13, 2005; *Omaha World Herald*.	The Honorable Mike Fahey, Mayor, City of Omaha, 1819 Farnam Street, Suite 300, Omaha, Nebraska 68183.	January 12, 2006	315274
Nebraska: Douglas	City of Omaha, (05–07–0345P).	October 20, 2005, October 27, 2005; *Omaha World Herald*.	The Honorable Mike Fahey, Mayor, City of Omaha, 1819 Farnam Street, Suite 300, Omaha, Nebraska 68183.	December 3, 2005	315274
Nevada: Clark	City of Las Vegas, (05–09–0073P).	October 6, 2005, October 13, 2005; *Las Vegas Review-Journal*.	The Honorable Oscar B. Goodman, Mayor, City of Las Vegas, 400 Stewart Avenue, Las Vegas, Nevada 89101.	January 12, 2006	325276
Nevada: Clark	Unincorporated Areas, (04–09–0462P).	May 26, 2005, June 2, 2005; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	September 1, 2005.	320003
Nevada: Clark	Unincorporated Areas, (05–09–0285P).	August 25, 2005, September 1, 2005; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	December 1, 2005	320003
Nevada: Clark	Unincorporated Areas, (05–09–1034P).	November 3, 2005, November 10, 2005; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	February 9, 2006	320003
Nevada: Clark	Unincorporated Areas, (05–09–0913P).	November 10, 2005, November 17, 2005; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	February 16, 2006	320003
Nevada: Washoe	City of Sparks, (05–09–0144P).	August 11, 2005, August 18, 2005; *Reno Gazette Journal*.	The Honorable Geno Martini, Mayor, City of Sparks, Sparks City Hall, 431 Prater Way, Sparks, Nevada 89432–0857.	July 21, 2005	320021
Nevada: Washoe	Unincorporated Areas, (04–09–1534P).	April 14, 2005, April 21, 2005; *Reno Gazette-Journal*.	The Honorable Bonnie Weber, Commission Chair, Washoe County Commission, 1001 East Ninth Street, Reno, Nevada 89512.	July 21, 2005	320019
New Jersey: Monmouth.	Borough of Monmouth Beach, (05–02–0298P).	May 24, 2005, May 31, 2005; *Asbury Park Press*.	The Honorable James P. McConville III, Mayor, Borough of Monmouth Beach, Borough Hall, 22 Beach Road, Monmouth Beach, New Jersey 07750.	May 12, 2005	340315

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New York: Dutchess.	Town of Beekman, (05–02–0303P).	August 4, 2005, August 11, 2005; *The Voice Ledger*.	The Honorable John Adams, Town Supervisor, Town of Beekman, Four Main Street, Poughquag, New York 12570.	January 18, 2006	361333
North Carolina: Durham.	City of Durham, (04–04–A570P).	May 26, 2005, June 2, 2005; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, City Hall, 101 City Hall Plaza, Durham, North Carolina 27701.	September 1, 2005.	370086
North Carolina: Mecklenburg.	Unincorporated Areas, (04–04–B009P).	September 29, 2005, October 6, 2005; *Charlotte Observer*.	Mr. Harry Jones, County Manager, Mecklenburg County, 600 East Fourth Street, 11th Floor, Charlotte, North Carolina 28202.	January 5, 2006 ...	370158
New Mexico: Bernalillo.	City of Albuquerque, (50–06–0440P).	October 13, 2005, October 20, 2005; *The Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Allbuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 30, 2005.	350002
Ohio: Hocking	Unincorporated Areas, (05–05–3596P).	September 15, 2005, September 22, 2005; *Logan Daily News*.	The Honorable Gary Starner, County Commissioner, Hocking County, One East Main Street, Logan, Ohio 43138.	December 22, 2005.	390272
Ohio: Lucas	City of Toledo, (05–05–0485P).	June 2, 2005, June 9, 2005; *Toledo Legal News*.	The Honorable Jack Ford, Mayor, City of Toledo, One Government Center, Suite 2200, Toledo, Ohio 43604.	September 8, 2005.	395373
Ohio: Medina	City of Brunswick, (04–05–A934P).	May 19, 2005, May 26, 2005; *Brunswick Sun Times*.	The Honorable Dale Strasser, Mayor, City of Brunswick, 4095 Center Road, Brunswick, Ohio 44212.	August 26, 2005 ..	390380
Ohio: Montgomery	City of Englewood, (04–05–B063P).	May 4, 2005, May 11, 2005; *Englewood Independent*, May 11, 2005, May 18, 2005; *Dayton Daily News*.	The Honorable Michael Bowers, Ph.D., Mayor, City of Englewood, 333 West National Road, Englewood, Ohio 45322.	April 21, 2005	390828
Ohio: Warren	City of Mason, (05–05–3134P).	August 11, 2005, August 18, 2005; *Pulse Journal*.	The Honorable Peter A. Beck, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, Ohio 45040.	July 18, 2005	390559
Oklahoma: Oklahoma.	City of Oklahoma City, (05–06–0390P).	September 14, 2005, September 21, 2005; *Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Third Floor, Oklahoma City, Oklahoma 73102.	August 30, 2005 ..	405378
Oklahoma: Oklahoma.	City of Oklahoma City, (05–06–1527P).	September 15, 2005, September 22, 2005; *Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Third Floor, Oklahoma City, Oklahoma 73102.	August 23, 2005 ..	405378
Oregon: Coos	City of Bandon, (05–10–0355P).	June 23, 2005, June 30, 2005; *Bandon Westernworld or The World*.	The Honorable Mary Schamehorn, Mayor, City of Bandon, P.O. Box 67, Bandon, Oregon 97411.	June 16, 2005	410043
Oregon: Marion	City of Aumsville, (03–10–0210P).	October 13, 2005, October 20, 2005; *Statesman Journal*.	The Honorable Harold White, Mayor, City of Aumsville, Aumsville City Hall, 595 Main Street, Aumsville, Oregon 97325.	January 19, 2006	410155
Oregon: Marion	Unincorporated Areas, (03–12–0210P).	October 13, 2005, October 20, 2005; *Statesman Journal*.	The Honorable Sam Brentano, Chair, Marion County, Board of Commissioners, P.O. Box 14500, Salem, Oregon 97309.	January 19, 2006	410154
Oregon: Clackamas, Multnomah Washington.	City of Portland, (05–10–0477P).	August 11, 2005, August 18, 2005; *The Oregonain*.	The Honorable Tom Potter, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Room 340, Portland, Oregon 97204.	July 20, 2005	410183
Pennsylvania: Clinton.	Township of Lamar, (05–03–0397P).	July 13, 2005, July 20, 2005; *Renovo Record*.	The Honorable Michael L. Geyer, Chairman, Board of Supervisors, Township of Lamar, 148 Beagle Road, Mill Hall, Pennsylvania 17751.	October 19, 2005	420327
Tennessee: Davidson.	Metropolitan Government of Nashville, (05–04–3100P).	November 10, 2005, November 17, 2005; *Nashville Record*.	The Honorable Bill Purcell, Mayor, Metropolitan Government of Nashville and Davidson County,107 Metropolitan Courthouse, 225 Polk Avenue, Nashville, Tennessee 37201.	October 27, 2005	470040

State and county	Location and case number	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Tennessee: Sevier	City of Pigeon Forge, (05–04–0672P).	October 27, 2005, November 3, 2005; *The Mountain Press*.	Ms. Earlene M. Teaster, City Manager, City of Pigeon Forge, P.O. Box 1350, Pigeon Forge, Tennessee 37868.	February 2, 2006	475442
Tennessee: Shelby.	City of Germantown, (04–04–A700P).	July 21, 2005, July 28, 2005; *The Daily News*.	The Honorable Sharon Goldsworthy, Mayor, City of Germantown, P.O. Box 38809, Germantown, Tennessee 38183–0809.	October 27, 2005	470353
Texas: Bexar	City of Converse, (05–06–1186P).	September 7, 2005, September 14, 2005; *Daily Commercial Recorder*.	The Honorable Craig Martin, Mayor, City of Converse, City Hall, 403 South Seguin, Converse, Texas 78109.	December 14, 2005.	480038
Texas: Bexar	City of San Antonio, (05–06–0027P).	June 30, 2005, July 6, 2005; *San Antonio Express-News*.	The Honorable Edward D. Garza, Mayor, City of San Antonio, City Hall Office, P.O. Box 839966, San Antonio, Texas 78283–3966.	June 7, 2005	480035
Texas: Collin	City of Frisco, (05–06–0046P).	July 22, 2005, July 29, 2005; *Frisco Enterprise*.	The Honorable Mike Simpson, Mayor, City of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034–1100.	October 27, 2005	480134
Texas: Collin	City of Plano, (05–06–0506P).	June 4, 2005, June 9, 2005; *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	May 24, 2005	480140
Texas: Collin	City of Plano, (05–06–0249P).	August 11, 2005, August 18, 2005; *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	November 17, 2005.	480140
Texas: Collin	Unincorporated Areas, (04–06–A195P).	May 11, 2005, May 18, 2005; *The Wylie News*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069.	August 17, 2005 ..	480130
Texas: Collin	Unincorporated Areas, (04–06–A195P).	May 11, 2005, May 18, 2005; *The Wylie News*.	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, Texas 75098.	August 17, 2005 ..	480759
Texas: Dallas	Town of Addison, (05–06–0244P).	November 17, 2005, November 24, 2005; *Dallas Morning News*.	The Honorable Joe Chow, Mayor, Town of Addison, P.O. Box 9010, Addison, Texas 75001.	February 23, 2006	481089
Texas: Dallas	City of Dallas, (04–06–A316P).	May 26, 2005, June 2, 2005; *Daily Commercial Record*.	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201–6390.	May 12, 2006	480171
Texas: Dallas	City of Farmer Branch, (05–06–0244P).	November 17, 2005, November 24, 2005; *Dallas Morning News*.	The Honorable Bob Phelps, Mayor, City of Farmers Branch, 12705 Epps Field, Farmers Branch, Texas 75234.	February 23, 2006	480174
Texas: Dallas	City of Garland, (04–06–A117P).	June 30, 2005, July 7, 2005; *Daily Commercial Record*.	The Honorable Bob Day, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	October 5, 2005 ...	485471
Texas: Dallas	City of Irving, (04–06–A212P).	October 6, 2005, October 13, 2005; *Dallas Morning News*.	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	September 20, 2005.	480180
Texas: Dallas	City of Mesquite, (05–06–0938P).	June 23, 2005, June 30, 2005; *Mesquite News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185–0137.	September 29, 2005.	485490
Texas: Dallas	City of Mesquite, (05–06–0527P).	August 4, 2005, August 11, 2005; *Mesquite News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	November 10, 2005.	485490
Texas: Dallas	City of Rowlett, (05–06–0921P).	September 23, 2005, September 30, 2005; *Rowlett Lakeshore Times*.	The Honorable C. Shane Johnson, Mayor, City of Rowlett, 4000 Main Street, Rowlett, Texas 75088.	December 30, 2005.	480185
Texas: Denton	Town of Copper Canyon, (04–06–A302P).	April 14, 2005, April 21, 2005; *Denton Record-Chronicle*.	The Honorable Lawrence Johnson, Mayor, Town of Copper Canyon, 400 Woodland Drive, Copper Canyon, Texas 75077.	July 21, 2005	481508
Texas: Denton	Town of Flower Mound, (05–06–1432P).	November 2, 2005, November 9, 2005; *Flower Mound Leader*.	The Honorable Jody A. Smith, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028.	February 8, 2006	480777
Texas: Denton	City of Lewisville, (05–06–0171P).	July 6, 2005, July 13, 2005; *Lewisville Leader*.	The Honorable Gene Cary, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	October 12, 2005	480195

State and county	Location and case number	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas: Denton	City of Lewisville, (05–06–0576P).	October 5, 2005, October 12, 2005; *Lewisville Leader*.	The Honorable Gene Cary, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	September 9, 2005.	480195
Texas: El Paso	City of El Paso, (05–06–0356P).	July 30, 2005, August 6, 2005; *El Paso Times*.	The Honorable Joe D. Wardy, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	July 18, 2005	480214
Texas: Harris	Unincorporated Areas, (05–06–0569P).	August 11, 2005, August 18, 2005; *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	July 29, 2005	480287
Texas: Johnson	City of Burleson, (05–06–0320P).	September 14, 2005, September 21, 2005; *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	September 7, 2005.	485459
Texas: San Patricio.	City of Ingleside, (05–06–0918P), (05–06–1433X).	May 19, 2005, May 26, 2005; *Ingleside Index*.	The Honorable Gene Stewart, Mayor, City of Ingleside, P.O. Drawer 400, Ingleside, Texas 78362.	May 16, 2005	485480
Texas: Tarrant	City of Benbrook, (05–06–0681P).	May 19, 2005, May 26, 2005; *Benbrook News*.	The Honorable Felix T. Hebert, Mayor, City of Benbrook, P.O. Box 26569, Benbrook, Texas 76126.	May 5, 2005	480586
Texas: Tarrant	City of Fort Worth, (04–06–A210P).	May 12, 2005, May 19, 2005; *Fort Worth Telegram Star*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	August 18, 2005 ..	480596
Texas: Tarrant	City of Fort Worth, (04–06–A325P).	July 21, 2005, July 28, 2005; *Fort Worth Telegram Star*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 5, 2005	480596
Texas: Tarrant	City of Fort Worth, (05–06–0480P).	August 25, 2005, September 1, 2005; *The Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	December 1, 2005	480596
Texas: Tarrant	City of Fort Worth, (05–06–0707P).	September 3, 2005, September 8, 2005; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	September 22, 2005.	480596
Texas: Tarrant	City of Fort Worth, (05–06–0209P).	October 20, 2005, October 27, 2005; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	January 26, 2006	480596
Texas: Tarrant	City of Grapevine, (05–06–0048P).	May 19, 2005, May 26, 2005; *Northeast Tarrant Star Telegram*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76099.	May 11, 2005	480598
Texas: Tarrant	City of Grapevine, (05–06–0423P).	September 1, 2005, September 8, 2005; *Grapevine Sun*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76099.	September 9, 2005.	480598
Texas: Tarrant	City of North Richland Hills, (05–06–0481P).	June 30, 2005, July 7, 2005; *Dallas Morning News*.	The Honorable T. Oscar Trevino, Jr., P.E. Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, Texas 76180.	October 6, 2005 ...	480607
Texas: Tarrant	City of North Richland Hills, (05–06–1126P).	November 3, 2005, November 10, 2005; *Dallas Morning News*.	The Honorable T. Oscar Trevino, Jr., P.E. Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, Texas 76180.	February 9, 2006	480607
Texas: Travis	City of Pflugerville, (04–06–A208P).	September 1, 2005, September 8, 2005; *Austin American-Statesman*.	The Honorable Catherine T. Callen, Mayor, City of Pflugerville, 100 East Main Street, Suite 300, Pflugerville, Texas 78660.	December 8, 2005	481028
Virginia: Prince William Independent City.	City of Manassas, (04–03–111P).	October 6, 2005, October 13, 2005; *Manassas Journal Messenger*.	The Honorable Douglas S. Waldron, Mayor, City of Manassas, City Hall, 9027 Center Street, Manassas, Virginia 20110.	January 12, 2006	510122

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 5, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 05–23950 Filed 12–12–05; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 70, No. 238
Tuesday, December 13, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 337 and 930

RIN 3206–AK86

Examining System and Programs for Specific Positions and Examinations (Miscellaneous)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to revise the Administrative Law Judge Program. The purpose of these revisions is to remove procedures that appear in other parts of this chapter, update outdated information, and remove the internal examining processes from the regulations. Additionally, these revisions describe OPM and agency responsibilities concerning the Administrative Law Judge Program. This proposed regulation continues the basic intent of making administrative law judges independent in matters of tenure and compensation.

DATES: Comments must be received on or before February 13, 2006.

ADDRESSES: Send, deliver, or fax written comments to: Mr. Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail: *employ@opm.gov;* fax: (202) 606–2329.

Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Watson by telephone at (202) 606–0830; by fax at (202) 606–2329; by TTY at (202) 418–3134; or by e-mail at *linda.watson@opm.gov.*

SUPPLEMENTARY INFORMATION: The administrative law judge function was established by the Administrative Procedure Act (APA) (Act of June 11, 1946, 60 Stat. 237, as amended) and codified in title 5, United States Code (U.S.C.), sections 556, 557, 1305, 3105, 3344, 4301(2)(D), 5372, and 7521. Administrative law judges preside at formal hearings and make or recommend decisions on the basis of the record. The APA requires that this function be carried out in an impartial manner. To assure objectivity of administrative law judges and to insulate them from improper pressure, the law made these positions independent of the employing agencies in matters of tenure and compensation.

The goal of this revision is to streamline the current administrative law judge regulations as prescribed in 5 CFR part 930, subpart B. Therefore, OPM is proposing a substantive rewrite of the administrative law judge regulations to eliminate procedures that appear in other parts of this chapter, remove the internal examination process, and remove obsolete instructions for implementing the current pay system authorized by the Federal Employees Pay Comparability Act of 1990; to add clarifying language; to include OPM and agency responsibilities under the program; to emphasize components of the Administrative Law Judge Program; to organize information into new sections for emphasis and clarity; and to revise the language to improve readability.

We propose in section 930.201, ''Coverage,'' to clarify that administrative law judge positions are in the competitive service, and competitive examining procedures apply. In addition, we propose to move sections 930.203b, ''Title of administrative law judge,'' and 930.212, ''Rotation of administrative law judges,'' to section 930.201 because this information applies to the general coverage of the Administrative Law Judge Program.

We also propose to add the authorities and responsibilities of OPM and agencies that employ administrative law judges in section 930.201. Currently, the regulations do not identify these authorities and responsibilities. Although OPM does not employ administrative law judges for the Federal Government, OPM does administer the Administrative Law Judge Program. In section 930.201, we describe OPM's authority and responsibility, according to the APA, as assuring that administrative law judges are independent in matters of appointment, pay, and tenure.

Proposed section 930.201(e)(3) states that OPM has the authority to establish classification and qualification standards for administrative law judge positions. OPM's authority to establish classification standards for administrative law judge positions is 5 U.S.C. 5372(b)(2). Section 104 of Public Law 101–509 removed administrative law judge positions from coverage under 5 U.S.C. 5104 and amended 5 U.S.C. 5372(b)(2) to authorize OPM to classify administrative law judge positions outside the General Schedule. Under 5 U.S.C. 1305, OPM may use its rulemaking authority to implement this classification authority for administrative law judge positions.

OPM's authority to establish administrative law judge qualifications as an adjunct to competitive examination is Civil Service Rule II, 5 CFR 2.1(a), which authorizes OPM ''to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.''

The legislative history of 5 U.S.C. 3105, formerly section 11 (1st sentence) of the APA, governing administrative law judge appointments, confirms the clear intent of Congress to give OPM the authority to establish qualification standards for administrative law judges as an adjunct to competitive examination. OPM may utilize its rulemaking authority in 5 U.S.C. 1305 to authorize qualification standards for administrative law judges.

An agency employing administrative law judges is responsible for appointing as many administrative law judges as needed and to assign cases to administrative law judges on a rotational basis so far as practicable.

We propose to move paragraph (c) of the current section 930.201, ''Coverage,'' to section 930.203, ''Cost of competitive examination.'' Paragraph (c) discusses the financial responsibility for the Administrative Law Judge Program. By adding paragraph (c) to section 930.203,

we are highlighting agencies' responsibility for the cost of the examination. Currently, under 5 U.S.C. 1104(a)(2), agencies employing administrative law judges are required to reimburse OPM for its examining services. Reimbursement is currently based on the agency's relative number of administrative law judge positions as of March 31 of the preceding fiscal year. To ensure an accurate count of administrative law judges, we also propose to change the time period from March 31 of the preceding fiscal year to the current fiscal year. The cost is calculated by OPM and each employing agency is notified of its share.

We propose to remove the definition of ''Promotion'' from section 930.202, ''Definitions.'' This term uses a common definition throughout the Federal Government and is defined in 5 CFR 210.102(b)(11). Standardizing definitions of common terms ensures their consistent application. We propose to add and define two significant terms to the regulations and clarify their specific use in this subpart: senior administrative law judge and superior qualifications.

We propose to change the title of section 930.203, ''Examination,'' to ''Cost of competitive examination.'' OPM has great discretion to design and administer competitive examinations (See 5 U.S.C. 1104, 1302, 3301, 3304.) OPM must be able to incorporate advances in the state of the art of examination methodology in the design of each administrative law judge examination. Consequently, OPM proposes to remove the examination scoring process currently published in section 930.203, and to state in section 930.201(e)(1) that use of the examination scoring process published in 5 CFR 337.101(a) is not required in scoring administrative law judge examinations. OPM is proposing a conforming revision in part 337. The current examination covered by OPM Examination Announcement No. 318 is closed and will be replaced by a new administrative law judge examination; therefore, we propose to remove all references to Announcement No. 318 from this subpart. When the new examination is available, OPM will announce the examinations as prescribed in 5 U.S.C. 3330.

A lengthy description of the administrative law judge examination and its procedures is contained in the existing section 930.203 of this subpart. The method by which examinations are conducted and administered is subject to periodic changes; therefore, removing these procedures from the regulations will provide OPM with the flexibility to adopt such changes, as appropriate. We propose to remove the detailed language describing internal examining and program processes and procedures from the regulations, such as the language concerning periodic open competition, minimum qualifications, supplemental qualifications, participation in examination procedures, final rating, preparation of certificates, and appeal of rating. The appropriate mechanism to address this type of information is the vacancy announcement. This information is prescribed in 5 U.S.C. 3330 and 5 CFR 300.104(b), 330.102(b) and 330.707, and is required in all vacancy announcements. As appropriate, OPM will continue to work with employing agencies to review the Administrative Law Judge Program for effectiveness and efficiency consistent with statutory requirements.

We propose to redesignate section 930.203a, ''Appointment,'' as section 930.204, ''Appointments and conditions of employment.'' We also propose to move paragraphs (b), (c), and (e) of section 930.203a, ''Appointment,'' and sections 930.204, ''Promotion,'' 930.205, ''Reassignment,'' 930.206, ''Transfer,'' and 930.207, ''Reinstatement,'' to section 930.204. The purpose is to highlight the prohibition of a probationary period for administrative law judges and to consolidate the various types of appointments under one section. With the consolidation, we propose to remove the internal examining processes and procedures involved in appointing an individual to an administrative law judge position; revise the language to clarify that agencies must obtain OPM's approval before making any promotion, transfer, reinstatement, reassignment, pay adjustments or senior administrative law judge appointments to an administrative law judge position; and include information related to the type of appointment and tenure group. Because provisions of the Ramspeck Act formerly codified at 5 U.S.C. 3304(c) were repealed by Public Law 104–65 on December 19, 1997, we are removing paragraph (d) of section 930.203a which involves the appointment of legislative and judicial employees to an administrative law judge position. These individuals now must compete with other outside candidates and meet the qualification and examination requirements for an administrative law judge position.

Currently, the administrative law judge regulations contain two terms, ''absolute status'' and ''career absolute appointment,'' that are not defined in either the United States Code or Code of Federal Regulations. We propose to remove these terms from the regulations and replace them with terms used in the competitive service, ''competitive status'' and ''career appointment.'' To be a career employee in the competitive service, an employee must serve 3 years of substantially continuous creditable service and is subject to a 1-year probationary period. However, section 315.201(c), ''Exceptions from service requirement,'' includes an exception from the 3-year service requirement when an appointment to a position is required by law to be filled on a permanent basis. The APA provides administrative law judges protection from improper influences and ensures independence when carrying out their duties by conferring competitive status at the time of appointment. Therefore, the requirements for probationary and career-conditional periods do not apply to administrative law judges. An administrative law judge appointment confers competitive status, places the employee in tenure group I, and does not require a probationary period.

Currently section 930.203a(c)(3), ''Appointment of incumbents of newly classified administrative law judge positions,'' addresses the appointment of employees whose positions are classified as an administrative law judge position on the basis of legislation, Executive order, or decision of the court. An agency has 6 months after the classification to recommend to OPM the appointment of an administrative law judge. We propose to delete the 6-month requirement and rely on the terms of the legislation, Executive order, or court decision for any time frames for appointments. Paragraph (c)(4) of the current regulations states that in an emergency situation OPM may authorize a conditional appointment of an employee to an administrative law judge position pending final decision on the employee's eligibility for career appointment. We propose to delete this provision because it is inconsistent with the intent of the APA that administrative law judges serve without condition.

The function of an administrative law judge is to prepare for and preside at formal hearings in accordance with the APA. Administrative law judges must be held to a high standard of conduct so that the integrity and independence of the administrative judiciary can be maintained. Similar to the attorneys employed by the Federal Government who are required to maintain an ''active'' status to practice law, administrative law judges are expected to meet professional licensing requirements as attorneys. Presently, an applicant who wishes to be an

administrative law judge must have been duly licensed and authorized to practice law as an attorney under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. We propose to clarify that a professional license requirement continues as a condition of employment for any individual serving as an administrative law judge. A professional license to practice law is required while serving as an administrative law judge. This requirement applies to eligibles on the Administrative Law Judge register, incumbent administrative law judges, former administrative law judges applying for reinstatement or reemployment, and retired administrative law judges applying under the Senior Administrative Law Judge Program. An administrative law judge must maintain an ''active'' status to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. In lieu of maintaining an ''active'' status to practice law, judicial status is acceptable in States that prohibit sitting judges from maintaining ''active'' status to practice law. Being in ''good standing'' is also acceptable in lieu of ''active'' status in States where the licensing authority considers ''good standing'' as having a current license to practice law.

For clarity, we propose to redesignate section 930.210, ''Pay'' as section 930.205, ''Administrative law judge pay system.''

We propose to delete paragraphs (j) through (m) of current section 930.210, which contain instructions for converting GS employees to the administrative law judge pay system on the first day of the first pay period beginning on or after February 10, 1991. Because all administrative law judges have been converted to the current pay system, these paragraphs are obsolete.

Currently, with OPM approval, an agency may pay a higher minimum rate to a candidate with superior qualifications who is appointed from an OPM certificate of eligibles to an administrative law judge position at level AL–3. Under section 930.205(f)(2), we propose to expand coverage under this authority to include an administrative law judge applicant with superior qualifications as well as a former administrative law judge with superior qualifications who is eligible for reinstatement.

We propose to add a new paragraph (i) to section 930.205 (as redesignated) to clarify that an agency may reduce the pay level or rate of basic pay of an administrative law judge for good cause either after the Merit Systems Protection Board orders the action, as provided in section 930.211 (as redesignated), or if agreed upon by the administrative law judge and with OPM's approval.

We propose to redesignate the existing section 930.211 as section 930.206, ''Performance rating and awards,'' and to move paragraph (b) of existing section 930.210, ''Pay,'' to section 930.206. This change consolidates the information on performance rating and awards into one section.

We propose to redesignate section 930.209 as section 930.207, and to change its title from ''Detail and assignment to other duties'' to ''Details and assignments to other duties within the same agency.'' The new title emphasizes the movement of an administrative law judge within the agency.

We propose to redesignate section 930.213, ''Use of administrative law judges on detail from other agencies,'' as section 930.208, ''Administrative law judge loan program—detail to other agencies.'' The title change echoes the term commonly used by the administrative law judge community for the process of detailing administrative law judges to other agencies. We also propose to clarify OPM's current practice of detailing an administrative law judge for a period within the current fiscal year with the possibility of an extension into the next fiscal year. OPM approves extensions on a case-by-case basis. Section 930.208 gives agencies the flexibility to meet unusual work circumstances requiring an administrative law judge to stay beyond the initial 1-year period.

We propose to redesignate section 930.216, ''Temporary reemployment: senior administrative law judges,'' as section 930.209, ''Senior administrative law judge program,'' to echo the term commonly used by the administrative law judge community for the process of employing retired administrative law judges. The title distinguishes this program from the loan program described in section 930.208 (as redesignated). We also are clarifying the employment limitation for reemployed administrative law judges to be either a specified period not to exceed 1 year or such periods as may be necessary to conduct and complete the hearing of one or more specified cases.

We propose to redesignate section 930.215, ''Reduction in force,'' as section 930.210. At the present time, agencies are allowed to fill vacant positions only through the OPM priority referral list. We propose to add a hiring flexibility allowing agencies to fill their vacant administrative law judge positions by reassigning administrative law judges within their workforce. This flexibility allows agencies to manage their administrative law judge workforce by providing the flexibility to make reassignments within their agency and will assure that adversely affected administrative law judges retain priority when the agency seeks to fill from outside its workforce. OPM will continue to retain the authority to grant exceptions to the order of selection.

We propose to redesignate section 930.214, ''Actions against administrative law judges,'' as section 930.211. We also propose to revise this section to improve clarity and readability. This section continues to recognize that administrative law judge applicants and appointees, like other applicants and appointees to the competitive service, are subject to suitability investigations and determinations.

Derivative Table Comparing New Section Numbers in Part 930, Subpart B With Old Section Numbers

To assist readers in comparing OPM's proposed rule to 5 CFR part 930, subpart B with the regulation as it is currently published, we have prepared the following derivation table.

DERIVATION TABLE FOR 5 CFR 930 SUBPART B

New section	Old section
930.201	930.201.
930.201(a)	930.201(a).
930.201(b)	930.201(b).
930.201(c)	930.203b.
930.201(d)	New.
930.201(e)(1) through (9).	New.
930.201(f)(1) and (2)	New.
930.201(f)(2)(i)	930.212.
930.202	930.202.
Administrative Law Judge Position.	930.202(c).
Agency	930.202(a).
Detail	930.202(b).
	930.202(d) (Removed).
	930.202(e) (Removed).
Removal	930.202(f).
Senior Administrative Law Judge.	930.216(a)(2).
Superior Qualifications.	930.210(g)(2).
930.203	930.201(c).
930.204	930.203a.
930.204(a)	930.203a(a) and (b).
930.204(b)	New
930.204(c)	930.203a(c).
930.204(c)(1)	930.203a(c)(1).

DERIVATION TABLE FOR 5 CFR 930 SUBPART B—Continued

New section	Old section
930.204(c)(2)	930.203a(c)(2).
930.204(c)(3)	930.203a(c)(3) (Revised).
930.204(c)(4)	930.203a(c)(4) (Revised).
	930.203a(d) (Removed).
930.204(d)	930.203a(e).
930.204(e)	930.204 (Revised).
930.204(f)	930.205 (Revised).
930.204(g)	930.207 (Revised).
930.204(h)	930.206 (Revised).
	930.208 (Removed).
930.205	930.210
930.205(f)(2)	930.210(g)(2)
930.205(i)	New
	930.210(j) through (m) (Removed).
930.206	New title.
930.206(a)	930.211.
930.206(b)	930.210(b).
930.207	930.209.
930.208	930.213.
930.209	930.216.
930.210	930.215.
930.211	930.214.

Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would affect only some Federal agencies and employees.

List of Subjects in 5 CFR Parts 337 and 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to amend 5 CFR parts 337 and 930 as follows:

PART 337—EXAMINING SYSTEM

1. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980.

Subpart A—General Provisions

2. Revise § 337.101(a) to read as follows:

§ 337.101 Rating applicants.

(a) OPM shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as otherwise provided in this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

3. Revise Subpart B to read as follows:

Subpart B—Administrative Law Judge Program

Sec.

930.201 Coverage.
930.202 Definitions.
930.203 Cost of competitive examination.
930.204 Appointments and conditions of employment.
930.205 Administrative law judge pay system.
930.206 Performance rating and awards.
930.207 Details and assignments to other duties within the same agency.
930.208 Administrative Law Judge Loan Program—detail to other agencies.
930.209 Senior Administrative Law Judge Program.
930.210 Reduction in force.
930.211 Actions against administrative law judges.

Authority: 5 U.S.C. 1104(a)(2), 1302(a), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954–1958 Comp., p. 219.

Subpart B—Administrative Law Judge Program

§ 930.201 Coverage.

(a) This subpart applies to individuals appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557 and to administrative law judge positions.

(b) Administrative law judge positions are in the competitive service. Except as otherwise stated in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) The title ''administrative law judge'' is the official title for an administrative law judge position. Each agency must use only this title for personnel, budget, and fiscal purposes.

(d) The Director of OPM, or designee, shall prescribe the examination methodology in the design of each administrative law judge examination.

(e) OPM does not hire administrative law judges for other agencies but has authority to:

(1) Recruit and examine applicants for administrative law judge positions, including developing and administering the administrative law judge examinations under 5 U.S.C. 1104(a)(2), except OPM is not required to use the examination scoring process in 5 CFR 337.101(a);

(2) Assure that decisions concerning the appointment, pay, and tenure of administrative law judges in Federal agencies are consistent with applicable laws and regulations;

(3) Establish classification and qualification standards for administrative law judge positions in Federal agencies;

(4) Approve noncompetitive personnel actions for administrative law judges, including but not limited to promotions, transfers, reinstatements, restorations, reassignments, and pay adjustments;

(5) Approve an intra-agency detail or assignment of an administrative law judge to a non-administrative law judge position that lasts more than 120 days or when an administrative law judge cumulates a total of more than 120 days for more than one detail or assignment within the preceding 12 months;

(6) Arrange the temporary detail (loan) of an administrative law judge from one agency to another under the provisions of the administrative law judge loan program in § 930.208;

(7) Arrange temporary reemployment of retired administrative law judges to meet changing agency workloads under the provisions of the senior administrative law judge program in § 930.209;

(8) Maintain and administer the administrative law judge priority referral program; and

(9) Comply with 5 U.S.C. 1305 for purposes of sections 3105, 3344, 4301(2)(D) and 5372 of title 5 U.S.C. and the provisions of section 5335(a)(B) of 5 U.S.C. that relate to administrative law judges.

(f) An agency employing administrative law judges under 5 U.S.C. 3105 has:

(1) Authority to appoint as many administrative law judges as necessary for proceedings conducted under 5 U.S.C. 556 and 557; and

(2) Responsibility for:

(i) Assigning an administrative law judge to cases in rotation so far as is practicable;

(ii) Obtaining OPM's approval before making any promotion, transfer, detail in excess of 120 days, reinstatement, reassignment, or restoration

appointments to an administrative law judge position, employment of senior administrative law judges, or pay adjustments as required under § 930.205; and

(iii) Ensuring the independence of the administrative law judge.

§ 930.202 Definitions.

In this subpart:

Administrative law judge position means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

Agency has the same meaning given in 5 U.S.C. 551(1).

Detail means the temporary assignment of an administrative law judge from one position to another administrative law judge position without change in civil service or pay status.

Reinstatement means reemployment of a former administrative law judge who has served under 5 U.S.C. 3105, meets the qualification requirements, and passes the current examination for an admininstrative law judge position.

Removal means the involuntary separation of an administrative law judge from employment as an administrative law judge or employment with an agency.

Senior administrative law judge means a retired administrative law judge who is reemployed under a temporary appointment under 5 U.S.C. 3323(b)(2) and § 930.209.

Superior qualifications means an appointment made at a rate above the minimum rate based on such qualifications that may include, but are not restricted to, experience practicing law before the hiring agency; experience practicing before another forum in a field of law relevant to the hiring agency; outstanding reputation among others in a field of law relevant to the hiring agency; or special skills that will meet a demonstrated need of the hiring agency.

§ 930.203 Cost of competitive examination.

Each agency employing administrative law judges must reimburse OPM for the cost of developing, examining, and administering the administrative law judge examinations. Each agency is charged a pro rata share of the examination cost, based on the actual number of administrative law judges the agency employs. OPM computes the cost of the examination program on an annual basis and notifies the employing agencies of their respective shares after the calculations are made.

§ 930.204 Appointments and conditions of employment.

(a) *Appointment.* An agency may appoint an individual to an administrative law judge position only with prior approval of OPM, except when it makes its selection from the list of eligibles provided by OPM. An administrative law judge receives a career appointment and is exempt from the probationary period requirements.

(b) *Licensure.* At the time of application and any new appointment and while serving as an administrative law judge, the individual must possess a professional license to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of ''active'' status in States that prohibit sitting judges from maintaining ''active'' status to practice law. Being in ''good standing'' is also acceptable in lieu of ''active'' status in States where the licensing authority considers ''good standing'' as having a current license to practice law.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give an incumbent employee an administrative law judge career appointment if that employee is serving in the position when it is classified as an administrative law judge position on the basis of legislation, Executive order, or a decision of a court and if:

(1) The employee has competitive status or is serving in an excepted position under a permanent appointment;

(2) The employee is serving in an administrative law judge position on the day the legislation, Executive order, or decision of the court on which the classification of the position is based becomes effective;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and has passed the current examination for an administrative law judge position.

(d) *Appointment of incumbents of non-administrative law judge positions.* Except as provided for in paragraph (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position.

§ 930.205 Administrative law judge pay system.

(a) OPM assigns each administrative law judge position in one of the three grades or levels of basic pay, AL–3, AL–2 or AL–1, of the administrative law judge pay system established under 5 U.S.C. 5372 in accordance with this section. Pay level AL–3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL–3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL–1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President determines the appropriate adjustment for each level in the administrative law judge pay system, subject to paragraph (a)(1) of this section. Such adjustments take effect on the first day of the first pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative law judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, respectively.

(b) Pay level AL–3 is the basic pay level for administrative law judge positions filled through a competitive examination.

(c) Subject to OPM approval, agencies may establish administrative law judge positions in pay levels AL–2 and AL–1. Administrative law judge positions are placed at these levels when they involve significant administrative and managerial responsibilities.

(d) Administrative law judges must serve at least 1 year in each AL pay level, or in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(e) Except as provided in paragraph (f) of this section, upon appointment to an administrative law judge position placed in level AL–3, an administrative law judge is paid at the minimum rate A of AL–3. He or she is automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a non-pay status is generally creditable service when computing the 52-week period as long as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to uniformed service or compensable injury is fully

creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL–3, an administrative law judge may be paid at the minimum rate A, unless the administrative law judge is eligible for a higher rate B, C, D, E, or F because of prior service or superior qualifications, as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate up to the lowest rate of basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F.

(2) With prior OPM approval, an agency may pay the rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. The agency may offer a higher than minimum rate to:

(i) An administrative law judge applicant with superior qualifications (as defined in § 930.202) who is within reach for appointment from an administrative law judge certificate of eligibles; or

(ii) A former administrative law judge with superior qualifications who is eligible for reinstatement.

(g) With prior OPM approval, an agency, on a one-time basis, may advance an administrative law judge in an AL–3 position with added administrative and managerial duties and responsibilities one rate above the administrative law judge's current AL–3 pay rate, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL–2 or AL–1, an administrative law judge is paid at the established rates for those levels.

(i) An employing agency may reduce the level or rate of basic pay of an administrative law judge under § 930.211 or if the administrative law judge voluntarily consents in writing to the reduction and with prior OPM approval.

§ 930.206 Performance rating and awards.

(a) An agency may not rate the job performance of an administrative law judge.

(b) An agency may not grant any award or financial incentives under 5 U.S.C. 4502, 4503, or 4504 to an administrative law judge.

§ 930.207 Details and assignments to other duties within the same agency.

(a) An agency may detail an administrative law judge from one administrative law judge position to another administrative law judge position within the same agency in accordance with 5 U.S.C. 3341.

(b) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(c) An agency may assign an administrative law judge to perform non-administrative law judge duties only when:

(1) The other duties are consistent with administrative law judge duties and responsibilities;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had a total of more than 120 days of such assignments or details within the preceding 12 months.

(d) OPM may authorize a waiver of paragraphs (c)(2) and (c)(3) of this section if an agency shows that it is in the public interest to do so. In determining whether a waiver is justified, OPM may consider, but is not restricted to considering, such factors as unusual case load or special expertise of the detailee.

§ 930.208 Administrative Law Judge Loan Program '' detail to other agencies.

(a) In accordance with 5 U.S.C. 3344, OPM administers an Administrative Law Judge Loan Program that coordinates the loan/detail of an administrative law judge from one agency to another. An agency may request from OPM the services of an administrative law judge if the agency is occasionally or temporarily insufficiently staffed with administrative law judges, or an agency may loan the services of its administrative law judges to other agencies if there is insufficient work to fully occupy the administrative law judges' work schedule.

(b) An agency's request to OPM for the services of an administrative law judge must:

(1) Identify and briefly describe the nature of the cases(s) to be heard;

(2) Specify the legal authority for which the use of an administrative law judge is required; and

(3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(c) The services of an administrative law judge under this program are made from the starting date of the detail until the end of the current fiscal year, but may be extended into the next fiscal year with OPM's approval. Decisions for an extension are made by OPM on a case-by-case basis.

(d) The agency requesting the services of an administrative law judge under this program is responsible for reimbursing the agency that employs the administrative law judge for the cost of the service.

§ 930.209 Senior Administrative Law Judge Program.

(a) OPM administers a Senior Administrative Law Judge Program in accordance with 5 U.S.C. 3323(b)(2). The Senior Administrative Law Judge Program is subject to the requirements and limitations in this section.

(b) A senior administrative law judge must meet the:

(1) Annuitant requirements under 5 U.S.C. 3323;

(2) Professional license requirement in § 930.204(b); and

(3) Suitability requirements in 5 CFR parts 5 and 731.

(c) Under the Senior Administrative Law Judge Program, OPM authorizes agencies that have temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy administrative law judge annuitants. If OPM is unable to identify an administrative law judge under § 930.208 who meets the agency's qualification requirements, OPM will approve the agency's request.

(d) An agency wishing to temporarily reemploy an administrative law judge must submit a written request to OPM. The request must:

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate the agency's temporary or irregular workload requirements for conducting proceedings;

(3) Specify the tour of duty, location, period of time, or particular cases(s) for the requested reemployment; and

(4) Describe any special qualifications the retired administrative law judge possesses that are required of the position, such as experience in a particular field, agency, or substantive area of law.

(e) OPM establishes the terms of the appointment for a senior administrative law judge. The senior administrative law judge may be reemployed either for a specified period not to exceed 1 year or for such time as may be necessary for the senior administrative law judge to conduct and complete the hearing and issue decisions for one or more specified cases. Upon agency request, OPM may reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements.

(f) A senior administrative law judge serves subject to the same limitations as

any other administrative law judge employed under this subpart and 5 U.S.C. 3105.

(g) A senior law judge is paid the rate of basic pay for the pay level at which the position has been classified. If the position is classified at pay level AL–3, the senior administrative law judge is paid the lowest rate of basic pay in AL–3 that equals or exceeds the highest previous rate of basic pay attained by the individual as an administrative law judge immediately before retirement, up to the maximum rate F.

§ 930.210 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction in force regulations in part 351 of this chapter apply to administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency lists its administrative law judges by group and subgroups according to tenure of employment, veterans' preference, and service date as outlined in part 351 of this chapter. Because administrative law judges are not given performance ratings (see § 930.206), the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) An administrative law judge who is reached in an agency's reduction in force and receives a notification of separation is eligible for placement assistance under the agency's reemployment priority list established and maintained in accordance with subpart B of part 330 of this chapter.

(2) An administrative law judge who is reached by an agency in a reduction in force and who is notified of being separated, furloughed for more than 30 days, or demoted, is entitled to have his or her name placed on OPM's administrative law judge priority referral list for the level in which last served and for all lower levels.

(i) To have his or her name placed on the OPM priority referral list, a displaced administrative law judge must provide OPM with a request for priority referral placement, a resume or equivalent, and a copy of the reduction in force notice at any time after the receipt of the specific reduction in force notice, but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion.

(ii) Eligibility on the OPM priority referral list expires 2 years after the effective date of the reduction in force action.

(iii) Referral and selection of administrative law judges are made without regard to selective certification or special qualification procedures.

(iv) Termination of eligibility on the OPM priority referral list takes place when an administrative law judge submits a written request to terminate eligibility, accepts a permanent full-time administrative law judge position, or declines one full-time employment offer as an administrative law judge at or above the level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(3) With OPM's prior approval, when there is no administrative law judge available on the agency's reemployment priority list, an agency may fill a vacant administrative law judge position through any of the following methods:

(i) OPM's administrative law judge priority referral list;

(ii) Reassignment from within the agency; or

(iii) Competitive examining, promotion, transfer, or reinstatement procedures; provided that the proposed candidate possesses experience and qualifications superior to an available displaced administrative law judge(s) on OPM's priority referral list.

§ 930.211 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as prescribed in 5 U.S.C. 7521 and 5 CFR part 1201. Procedures for adverse actions by agencies under part 752 of this chapter do not apply to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, is detrimental to the interests of the Federal Government, the agency may:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on annual leave, sick leave, leave without pay, or absence without leave, as appropriate, if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If the alternatives in paragraphs (b)(1) through (b)(3) of this section are not available, the agency may consider placing the administrative law judge in a paid non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in paragraphs (a) and (b) of this section do not apply:

(1) In making dismissals or taking other actions under 5 CFR parts 5 and 731;

(2) In making dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532;

(3) To reduction in force actions taken by agencies under 5 U.S.C. 3502; or

(4) In any action initiated by the Office of Special Counsel under 5 U.S.C. 1215.

[FR Doc. 05–23930 Filed 12–12–05; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

RIN 3064–AC98

Large-Bank Deposit Insurance Determination Modernization Proposal

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In view of the significant industry consolidation in recent years, the FDIC is exploring new methods to modernize its deposit insurance determination process, whereby the insurance status of each depositor is determined in the event of failure. Procedures currently used by the FDIC to determine deposit insurance coverage may result in unacceptable delays if used for an FDIC-insured institution with a large number of deposit accounts. In developing a new system to determine insurance coverage, the FDIC's goals are to minimize disruption to depositors and communities, and maximize recoveries for the deposit insurance fund in the event one of the largest insured institutions should fail. The FDIC is seeking comment on the best means to accomplish these objectives, and is offering three possible options for comment. The focus of this Advance Notice of Proposed Rulemaking (''ANPR'') is on FDIC-insured institutions with the largest number of deposit accounts, currently expected to include only the 145

insured institutions with total number of deposit accounts over 250,000 and total domestic deposits of at least $2 billion (''Covered institutions''). None of these options require that insured institutions transmit deposit data to the FDIC unless the institution is in danger of failing.

DATES: Comments must be submitted on or before March 13, 2006.

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: James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151 or *jmarino@fdic.gov* or Christopher Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The FDIC seeks comment on the best way to improve the deposit insurance determination process. Three options are presented for comment.

- Option 1 would require Covered institutions to have installed on their computer systems a routine that, in the event of failure, would automatically place a temporary hold on a portion of the balances in large deposit accounts. The percentage hold amount would be determined by the FDIC at the time of failure, depending mainly on estimated losses to uninsured depositors. These holds would be placed immediately prior to the institution reopening for business as a bridge bank, generally expected to be the next business day. The institution also would need to be able to automatically remove these holds and debit the account, if necessary, depending on the results of the FDIC's insurance determination. The insurance determination would be facilitated by the institution providing the FDIC, in the event of failure, with depositor data (name, address, tax identification number, etc.) in a standard format, including a unique identifier for each depositor and the insurance category of each account.
- Option 2 is similar to Option 1, except the standard data set would include only information the institution currently possesses. This option would not require a unique identity for each depositor or that the institution supply the insurance category for each account.
- Option 3 would require that, in addition to Option 1 or Option 2, the largest 10 or 20 Covered institutions (in terms of the number of deposit accounts) know the insurance status of their depositors at any given point in time and have the capability to automate the placement of hard holds and debit uninsured funds as specified by the FDIC upon failure.

The FDIC is interested in improving its ability to make insurance determinations in the insured institutions with the largest number of deposit accounts, which currently would include insured institutions with over 250,000 deposit accounts and total domestic deposits over $2 billion. As of June 30, 2005 that would include 145 institutions.

Historically the FDIC has taken responsibility for making an insurance determination at the time of failure based on the failed institution's records. A precise deposit insurance determination requires a specialty system to analyze depositor data and apply the insurance rules. Under current law an insured depository institution is not required to calculate by depositor the amount of funds exceeding the $100,000 insurance limit (by depositor and insurance category).

As part of its normal practice, the FDIC obtains depositor data only at the time an insured institution is in danger of failing. These data are received in the weeks or months prior to failure, and are obtained for the sole purpose of determining the insurance status of individual depositors and estimating the total amount of insured funds in the institution. The receipt of such depositor data is necessary for the FDIC to carry out its insurance function. The options provided in this ANPR do not alter the FDIC policy regarding the receipt of depositor information in preparation for the resolution of a failing insured institution. The FDIC is aware of the potential privacy issues surrounding the holding of depositor information and has in place strict safeguards to protect these data.

The FDIC operates under a mandate when handling a failing institution to structure the least costly of all possible resolution transactions,[1] except in the event of systemic risk [2] and even in those cases the FDIC must conserve costs. Since the introduction of the systemic risk exception in 1991 no exceptions to the least-cost requirement have been granted. The FDIC's least-cost requirement was intended to reduce resolution cost and instill a greater degree of market discipline by requiring that losses be borne by uninsured depositors and non-deposit creditors. The FDIC's claims process clearly plays a central role in this area.

When an insured institution fails the FDIC may pay insured depositors up to the insurance limit (a ''pay-off'') or the FDIC may sell the failed institution to another FDIC-insured institution (a ''purchase and assumption transaction''). Another option is to establish a bridge bank [3] or a conservatorship and transfer deposits to that institution. Preservation of the deposit franchise of a failed institution is an important facet of minimizing resolution costs. As a consequence, the FDIC is most likely to use a bridge bank structure in the resolution of a Covered institution, although a pay-off or a purchase and assumption transaction remain possibilities. Establishing a bridge bank should contribute greatly to customer retention and minimize potential operational difficulties, which will enhance the sales premium when the bridge bank is privatized as part of the final resolution transaction.[4]

The FDIC also has a legal mandate to pay insured deposits ''as soon as possible'' [5] after an institution's closure. Although the FDIC has no statutory requirement to provide access to insured deposits within a specified time

[1] Section 13(c)(4)(A)(ii) of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1823(c)(4)(A)(ii).

[2] Section 13(c)(4)(G)(i) of the FDI Act, 12 U.S.C. 1823(c)(4)(G)(i).

[3] A bridge bank is a national bank chartered for the purpose of temporarily carrying on the banking operations of a failed institution until a permanent solution can be crafted. See 12 U.S.C. 1821(n). The FDIC's bridge bank authority applies only to the failure of a bank. In the event of the failure of an insured savings association the FDIC could seek a federal thrift charter that would be operated as a conservatorship. As with a bridge bank, the new thrift institution would be a temporary mechanism to facilitate a permanent resolution structure.

[4] Bovenzi, John F., ''An FDIC Approach to Resolving a Large Bank,'' *Financial Market Behavior and Appropriate Regulation Over the Business Cycle*, Chicago: Federal Reserve Bank of Chicago, May 2002, pages 56–61.

[5] Section 11(f)(1) of the FDI Act, 12 U.S.C. 1821(f)(1).

after failure it places a high priority on providing access to deposits promptly to:

- Maintain public confidence in the banking industry and the FDIC.
- Provide the best possible service to insured depositors by minimizing uncertainty about their status and avoiding costly disruptions such as returned checks and a limit on their ability to meet financial obligations.
- Mitigate the spillover effects of a failure, which may include risks to the payments system, problems stemming from depositor illiquidity and a substantial reduction in credit availability. For large failures the potential spillover effects can be magnified, underscoring the importance of a rapid resolution. Effectively addressing spillover effects minimizes the likelihood of systemic risk.
- Retain, where feasible, the franchise value of the failed institution (and thus minimize the FDIC's resolution costs).

Historically, most insured institution closures have occurred on a Thursday or Friday. In recent years, the FDIC has made funds available to the majority of depositors by the next business day, usually the Monday following a Friday closing.

All of the insured institution failures of the past 10 years have been of modest size, the largest being Superior Bank, FSB with total deposits at the time of closure of about $2 billion and roughly 90,000 deposit accounts. This failure pattern does not overshadow the FDIC's mandate to handle the failure of an insured institution of any size. Continued industry consolidation has caused the FDIC to reexamine its approach to conducting a deposit insurance determination, including the adoption of new technologies and business processes that could greatly increase the efficiency and timeliness of resolving a failed institution and getting depositors access to their funds.

Industry consolidation raises practical concerns about the FDIC's current business model for conducting a deposit insurance determination. Larger institutions—especially those initiating recent merger activity—are considerably more complex, have more deposit accounts, greater geographic dispersion, more diversity of systems and data consistency issues arising from mergers than has been the case historically. Implications of industry consolidation over the past 10 years can be seen in the following table. Should such trends continue, deposits will become even more concentrated in the foreseeable future.

TABLE 1.—TOP TEN INSTITUTIONS, BY NUMBER OF DEPOSIT ACCOUNTS

[In millions]

Rank	1995	2000	2005
1	11.0	36.4	47.8
2	6.5	10.9	29.1
3	3.8	9.0	22.7
4	3.6	7.9	17.4
5	3.5	7.8	16.3
6	3.3	7.2	10.3
7	3.3	6.5	9.0
8	3.2	5.5	8.7
9	3.1	5.1	6.1
10	3.0	5.0	5.0
Total	44.3	101.3	172.5

Source: FDIC.

This ANPR discusses regulatory options for a new business model for insurance determinations where Covered institutions would be required to facilitate the calculation of the insurance coverage of deposit accounts. Prior to developing the options discussed below and as part of its ongoing work to improve the efficiency of the claims process, the FDIC held meetings with senior examiners from the FDIC and other Federal banking agencies. Further, the FDIC solicited advice and opinions from the staff of four large insured depository institutions and a deposit servicer of large institutions.

After the basic options discussed in this ANPR were developed the FDIC held meetings with four large providers of deposit software or servicing to Covered institutions. During these meetings FDIC staff presented the options along with substantial background on its insurance determination process and the objectives of the current claims modernization process. The deposit software vendors/servicers were asked to consider the feasibility of the options, including potential costs. Each vendor expressed a strong preference among these options for Option 2 (described in more detail below). The FDIC's impression from these meetings was that Option 2 could be incorporated into the vendor's deposit systems. Based on discussions with these vendors, staff of the FDIC believes the costs for Option 2 likely would be fairly modest.

These vendor visits were followed by meetings with the other Federal banking agencies: The Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency and the Office of Thrift Supervision. Visits also were made to several banking trade organizations to discuss the options and solicit feedback. Lastly, the options were presented for comment to the four large insured depository institutions visited earlier in the process.

The options outlined here cannot be implemented without some regulatory and financial burden. The FDIC is seeking to minimize these costs while at the same time ensuring that it can effectively carry out its mandates to make insured funds available quickly to depositors and provide a least-cost resolution for Covered institutions. The FDIC would like comment on the potential industry costs and feasibility of implementing the options (described below in more detail). The FDIC also is interested in comments on whether there are other ways to accomplish its goals that might be more effective or less costly or burdensome. In other words, what approach or combination of approaches (which may include new alternatives) most effectively meets this cost/benefit tradeoff?

Implementation of these or similar options will require that the FDIC amend its regulations. If changes in the regulations are proposed, the FDIC will publish a Notice of Proposed

Rulemaking and afford the opportunity for additional public comment before any final decision is made.

II. Background

FDIC Insurance Coverage

The basic insurance limit is $100,000 per depositor, per insured institution. Depositors eligible to receive insurance coverage include natural persons, legal entities such as corporations, partnerships and unincorporated associations, and public units. Insurance coverage is based on the concept of ownership rights and capacities. Deposits maintained by a person or entity in different ownership rights and capacities at one institution are separately insured up to the insurance limit. Deposits maintained in the same ownership rights and capacities are added together to determine the insurance coverage. The FDIC's rules and regulations for deposit insurance coverage describe the categories of ownership rights and capacities eligible for separate insurance coverage. FDIC refers to these as ''ownership categories'' (see Appendix A for a description of the primary ownership categories).[6]

All types of deposits (for example, checking accounts, savings accounts, certificates of deposit, interest checks and cashier's checks[7]) that a depositor has at an institution in the same ownership category are added together before the FDIC applies the insurance limit for that category. A depositor cannot increase insurance coverage by dividing funds into different accounts in the same ownership category at the same institution. Similarly, in the case of joint accounts, using different co-owner Social Security numbers on different accounts does not increase insurance coverage. In a deposit insurance determination, the FDIC relies upon the deposit account records of the failed institution to determine the ownership of an account and thus the amount of insurance coverage available.

Current Deposit Insurance Determination Process

Background. The deposit insurance determination process has several steps. Each step varies in time and complexity, depending on the institution's characteristics (primarily the number of deposit accounts and deposit systems).

Closing out the day's business. Generally, on the day of an institution's failure, all of the day's check processing and deposit transactions are completed (not including the overdraft decision-making process that occurs the following morning). The length of this process can vary across institutions. For larger institutions this process can run into the early morning hours possibly ending at 4 a.m. or later.

Obtain deposit data. A data file is obtained from the institution or its servicer. Obtaining usable requisite data from the institution or its servicer frequently is a time-consuming process. The FDIC will provide the institution or its servicer with a standard data request. The standard data request requires the institution to provide approximately 45 data fields for each deposit account along with electronic copies of trial balances and deposit application reconciliations. FDIC technical staff works with the insured institution until the standard data set requirements are met and the files transmitted to the FDIC can be processed properly.

Generally, the FDIC has at least 30 days advance warning to plan and prepare for failures. Data are requested in advance to ensure delivery capabilities, prove the balancing and reconciliation processes and make certain all required fields have been included. In instances in the past, where a large depository institution experienced financial difficulties, liquidity pressures forced the closing of the institution before it became capital insolvent. As a consequence, the FDIC is concerned that lengthy advanced warning and early access may not be possible or practical for a Covered institution that becomes financially troubled. More limited access combined with complexities inherent in large-institution deposit systems—including multiple deposit systems and significant data volumes—could materially delay the process of obtaining data necessary to conduct a deposit insurance determination.

Process deposit data. Data are received and validated (including reconciliation to the actual trial balance). Using its Receivership Liability System (''RLS'') the FDIC determines which accounts are fully insured, which are definitely uninsured and which are possibly uninsured (pending the collection of further information). The RLS automatically groups accounts based on the estimated ownership category and the name(s), address, and tax identification number for each account. This process is part of the insurance determination performed on the depositor data received from a failed institution.

FDIC holds/debits based on insurance determination results. Accounts definitely uninsured are debited for the uninsured amount. Holds are placed on accounts that are deemed potentially uninsured for amounts over the insurance limit and the account owner is contacted. If additional information is required from the depositor, a meeting is scheduled. These meetings afford the opportunity to collect information necessary to finalize the insurance determination on the possibly uninsured depositors.

The typical institution resolved by the FDIC does not have the capability to post a large volume of holds electronically by batch. In these cases holds are placed manually usually through the on-line system. In two failures in the recent past the FDIC has had the ability to work with programmers prior to the closing to create an automated method. This required a significant amount of time and availability of staff prior to the failure. Automatically processing a large number of holds at closing without pre-failure preparations and testing may result in significant operational difficulties during and after opening the new institution for business. In one instance the FDIC discovered after the fact that the programmed holds could not be removed by tellers under the direction of FDIC staff. These holds could only be removed by another program that ran in batch mode. This caused a delay in releasing funds to insured customers.

FDIC System Upgrades

As part of its claims process review, the FDIC will streamline the business processes it uses to facilitate a deposit insurance determination. This will involve developing a new deposit insurance claims processing system incorporating more advanced technologies to enhance automation. These changes will improve the FDIC's ability to process efficiently a large number of accounts and provide timely customer support to uninsured depositors. In the case of a Covered institution that is in danger of failing, enhancements to the FDIC's claims system would be complemented by the options proposed in this ANPR. In particular, the FDIC is focusing on the collection and validation of deposit data and the capability of automatically debiting or placing holds on uninsured or potentially uninsured accounts.

[6] See also *Financial Institution Employee's Guide to Deposit Insurance,* Federal Deposit Insurance Corporation, 2004. This publication as well as additional information on insurance coverage is available at *http://www.fdic.gov/deposit/deposits/index.html.*

[7] Cashiers' checks, money orders, officers' checks, interest checks, loan checks or expense checks constitute official items. Official items are included in the deposit insurance determination only if they are drawn on the failed bank.

The Banking Landscape From the Claims Perspective

Industry segmentation. Insured depository institutions can be divided into two general categories, depending on the unique issues posed during a potential resolution. The single most important facet determining the complexity of the claims process is the number of deposit accounts, although the volume of daily transactions also can be important. For the purpose of claims process planning the FDIC has divided the industry into two segments as shown in Table 2.

This segmentation does not result in two homogenous groups. There are profound differences among institutions in each group. From the deposit claims perspective the varying characteristics of Covered and Excluded institutions suggest the need for different claims approaches and methodologies.

Complexity: Large institutions typically have more accounts and more complex deposit systems. With Covered institutions the speed of the claims process could be greatly enhanced by the FDIC obtaining a timely data download and improving the capability to automatically post holds or debit uninsured funds.

TABLE 2.—INDUSTRY SEGMENTATION.

Segment	Definition	Number	Percent of total	Total domestic deposit (billions)	Percent of total
Covered	Total number of deposit accounts over 250,000 *and* total domestic deposits over $2 billion.	145	1.6	$3,982	67.1
Excluded	All insured institutions not covered	8,735	98.4	1,950	32.9
Total		8,880	100.0	5,932	100.0

Source: FDIC.
Note: Data are as of June 30, 2005.

Resolution structure: The resolution of a Covered institution is likely to unfold differently compared to one of smaller size. These differences generally relate to the expected nature of the failure. In today's environment a critically undercapitalized institution will receive a supervisory letter indicating it has 90 days to improve its capital position, otherwise it will be closed (capital insolvency). If the institution's capital level is not improved during this time, a failure will occur, typically on a Friday. This process affords the FDIC substantial advance warning and the opportunity to prepare by obtaining deposit data up to 90 days in advance of failure and by having the opportunity to work with the failing institution's information technology staff.

Covered institutions are more likely to fail due to liquidity reasons prior to becoming critically undercapitalized (liquidity insolvency). Most likely, this will be a less orderly event. Institutions more susceptible to a liquidity insolvency pose greater problems for the FDIC. Such institutions have a less predictable failure date; the failure could occur on any day of the week; and pre-failure access to the institution may be limited because the institution's insolvency is difficult to anticipate.

Covered insured depository institutions present unique challenges in the event of failure. For the smaller, less-complex Covered institutions these challenges may be only modest; for the larger, more complex members of the group they are more severe. The FDIC is concerned about both the size and complexity of the deposit operations of Covered institutions and the speed at which a claims process must be conducted to make funds available quickly to depositors and maximize the institution's franchise value.

III. Proposed Deposit Insurance Determination Timeline

General Process

This ANPR presents three options for discussion. Each of these options would require modifications to the deposit systems of Covered institutions to facilitate the insurance determination process. The third option would require the larger Covered institutions to determine the insurance status of each depositor. In this case the FDIC would rely upon institution-generated results in the event of failure. Alternatively, the first two options imply a process similar to that currently undertaken by the FDIC, but with important distinctions. The general timeline of the insurance determination process under Options 1 and 2 is outlined below.

Step 1. The institution is closed, typically at the end of the business day.

Step 2. The institution's nightly deposit cycle is completed, a process which may run into the early morning hours. This process posts the day's deposit transactions, ending with the account balance used for deposit insurance purposes.

Step 3. After the nightly deposit cycle is processed and the ending balance obtained for each account, the insured institution's deposit system would post what the FDIC is calling a ''provisional hold'' on certain large deposit accounts. The capability to post provisional holds is not a current feature of deposit processing systems and would have to be specifically created for this purpose. The provisional hold is a calculated amount based on the account type and balance. Accounts below a certain threshold (for example, $50,000) would be exempt from a provisional hold. Based upon an initial analysis of potential losses from the failed institution, a specified percent (for example, 10 percent) of each account above this size threshold would be subject to a provisional hold. The actual threshold account size and hold percentage would be provided by the FDIC the night the institution is closed, based primarily on estimated institution losses. The threshold size and hold percentage may vary by account type (for example, demand and NOW accounts, savings deposits, time deposits and IRAs). Once the financial institution calculates the provisional hold amounts, holds must be placed on each affected account. The Hold Code legend should read ''FDIC Provisional Hold.'' The provisional holds would remain in place until the insurance determination results are determined by the FDIC. The FDIC provisional holds would be removed en masse once insurance determinations have been made by the FDIC. The FDIC will direct the institution's Operations/IT staff to reverse all provisional holds. It is anticipated this will be done by using the original provisional holds file and

changing it to reverse the provisional holds. The FDIC provisional holds should be of a nature that they can be overridden only by IT personnel at the direction of the FDIC if the need arises that individual provisional holds must be removed prior to the en masse removal.

Step 4. After the provisional holds are in place the institution (most likely a bridge bank) is ready to open for business. Posting of provisional holds must occur prior to the start of the business day following failure and appear on hold reports and the on-line system. The ''available balance'' must show the customer balance after the provisional hold has been posted.

Step 5. The Covered institution also must have the capability to generate a standard data set of deposit account fields necessary for the FDIC to conduct the deposit insurance determination. Except as discussed below for Option 1, the standard data set would be comprised of information the bank already has on hand. Principal balances, accrued interest, and record counts captured as part of this process must be reconciled to the institution's actual trial balance reports or summary totals reports. A mechanism would need to be in place to transmit these data quickly to the FDIC or its designated processing vendor.

Step 6. Upon receipt of the institution's standard data set the FDIC will process the information to determine the insurance status of each account. The FDIC will generate one of three possible outcomes for each account.

1. Account is fully insured: remove the provisional hold. No further action is required.

2. Account is definitely uninsured: remove the provisional hold and debit the account in the amount specified by the FDIC.

3. Account is possibly uninsured but further information is required by the FDIC to make the final determination: remove the provisional hold and place a regular bank hold [8] in the amount specified by the FDIC.[9]

[8] Bank holds should have a legend stating ''FDIC Hold'' and are placed for an unlimited number of days.

[9] Certain trust accounts and accounts eligible for pass-through coverage will require additional information to determine insurance status. The FDIC must obtain this information from the depositor. This process may take several weeks in the case of a relatively large Covered institution. The bank hold with the ''FDIC Hold'' legend will remain in place until results are obtained. The results of the insurance determination on these accounts will be passed to the institution (bridge bank or assuming institution) as they become available. When these accounts are processed, the deposit insurance determination will be complete.

The FDIC intends to forward insurance results to be incorporated into the institution's deposit systems as soon as possible, perhaps as quickly as the day following the receipt of the standard data set. The results will dictate debits and holds to be placed by batch in an automated fashion on deposit accounts. The processing stream would be as follows: FDIC will notify Operations/IT that results are available. This notification will trigger a process whereby all provisional holds are removed en masse using the original file to create the removal transactions. After provisional holds have been removed debit transactions and bank holds will be placed on accounts as determined in the process described above in items 1 through 3.

Provisional Holds

The steps described above would require new features for the deposit systems of Covered institutions. These features are: (1) The creation of a standard data set reconciled to the institution's actual trial balance; (2) the calculation of provisional holds on the basis of FDIC-specified criteria and placement of provisional holds after the regular deposit processing is complete for the day; (3) the capability to remove the provisional holds en masse and (4) the ability to place bank holds by batch, electronically.

Since provisional holds enhance the FDIC's ability to open a bridge bank quickly, it substantially increases the potential resale value of the institution. These holds are necessary to stop the potential outflow of uninsured funds subject to risk during the first business day(s) of the bridge bank's operations. At the same time depositors are provided access to the majority of their funds.

Potential difficulties could arise from provisional holds, including acceleration in the number of returned items. There is a tradeoff between holding uninsured funds potentially subject to loss and quickly making funds available to depositors. The FDIC must strike a balance in this decision-making process. As a part of this balance, the FDIC could require that the percentage of the provisional hold differ between account type.

Historically losses on large insured institutions have been lower as a percent of assets compared to the smaller, more typical failure. Large institutions also tend to hold more subordinated debt and other general creditor claims compared to smaller institutions. These facts suggest the possibility that the provisional hold percentage will be fairly modest in the failure of most Covered institutions.

IV. Options

The FDIC has preliminarily identified three options, each of which is discussed below. The FDIC invites comments on these options, as well as other suggestions to achieve the objectives identified in this document. In addition, the FDIC seeks comments on several related issues. *These options are being considered only for Covered institutions.*

The definition of a Covered institution is being actively considered. At this point the definition includes insured institutions with at least 250,000 deposit accounts and more than $2 billion in domestic deposits. These thresholds are subject to further research and consideration. A limited number of large insured institutions (total assets over $20 billion) would not fall under this definition because they have fewer than 250,000 deposit accounts. Inclusion of these institutions in the definition of ''Covered'' is being considered. Further, a multi-bank holding company could have at least one Covered institution while other members do not meet the definition. Consideration is being given to defining as Covered other members of a multi-bank holding company as long as at least one of its members meets the size thresholds listed above.[10]

Option 1

Option 1 would require each Covered institution (except those to which Option 3 would apply) to have in place on an ongoing basis the ability to:

- Identify the owner(s) of each account by using a unique identifier.
- Identify the deposit insurance ownership category of each deposit account.
- Supply to the FDIC a standard data set mapped and formatted to FDIC specifications and reconciled to the institution's actual trial balance. (See Appendix B for a preliminary list of data to be included in the standard data set.)
- Calculate and place provisional holds automatically according to the FDIC's specifications at the end of processing on any given business day.
- Remove provisional holds automatically according to the FDIC's specifications at the end of processing on any given business day.

[10] Some members of a multi-bank holding company hold only a limited number of deposit accounts, perhaps dictating exclusion from the definition of covered.

• Add and remove automatically the FDIC-supplied holds/debits on an as-needed basis.

To ensure compliance the FDIC would test periodically a Covered institution's ability to produce the required processes.[11] The testing process would focus on data quality and accuracy, the ability to produce quickly a standard data set meeting the FDIC's criteria, the ability to effectively submit data and the viability of the hold processes. The FDIC recognizes the sensitivity of depositor data and the privacy issues that may arise. The FDIC believes it is possible to conduct an effective testing process while on-site, without the need for sensitive depositor data to leave the institution's premises.

As each covered institution's system would be tested periodically, the FDIC should be able to rely upon the unique owner identifier and the insurance category of each account. Reliance upon these data would accelerate the insurance determination process. Without these data the FDIC would have to identify account owners and each account's insurance category based primarily on the name and address fields and tax identification numbers, as is the case with the current process.

The FDIC would require certain fields from the customer information file (''CIF'') system such as CIF number, name, address, taxpayer identification number and certain fields from the deposit system such as account number, account name, address, and principal balance. The data from the CIF file and the deposit systems must be linked. These data elements will be used to determine account owners and to perform insurance determinations. It is proposed that Covered institutions have the data elements mapped and formatted to the FDIC specifications and available to run on short notice. Further, the Covered institutions would have available a method to reconcile the file to actual trial balances to ensure all deposit accounts were captured. Proof of reconciliation would be required.

One of the elements of the standard data set (as set forth in Appendix B) is ''product type.'' In connection with this element, an insured depository institution must identify ''accounts owned by bank'' or ''bank-owned accounts.'' This term means an account that does not qualify as a ''deposit'' account as defined in the Federal Deposit Insurance Act. *See* 12 U.S.C. 1813(l). For example, a depository institution might establish an account reflecting the collection of loan payments from borrowers. These collected funds represent income. They do not represent insured ''deposits'' because the depository institution is not obligated to make repayment. All such ''bank-owned accounts'' must be identified in the standard data set.

The volume of data to be provided in deposit/CIF files of Covered institutions can create time delays. In the event a Covered institution is viewed as in danger of failing, the institution would be required to quickly send or transmit data to secure FDIC sites.

Questions. What would be the overall cost to a Covered institution for developing the capability to automatically post provisional holds, remove provisional holds and automatically process account debits and holds based on the insurance determination results? What would be the overall cost to a Covered institution for developing the capability to produce a formatted standard data file, link CIF files to deposit files and prepare balancing and reconciliation schedules? How expensive would it be for Covered institutions to supply a unique identifier for each depositor? What would be the cost of supplying the insurance category for each account? How reliable would be the data identifying each depositor and account insurance category? Would Covered institutions have difficulty supplying reliable data for any of the items listed in Appendix B, such as for bank owned accounts? If so, which ones? Are Covered institutions able to identify account owners (as opposed to trustees, managers, beneficiaries, etc.) from their files?

The deposit systems on many Covered institutions use software purchased from a small group of vendors. To what extent would vendor-based software changes help mitigate the overall implementation costs of this program? Could a vendor develop the standard data set and program to pull the data into the specified format for multiple institutions or does each institution have unique details that would prevent this from occurring?

Some Covered institutions may use a servicer to process deposit accounts, and some Covered institutions may share the same deposit servicer. To what extent would implementation changes made by the servicer mitigate the costs of this program?

To meet the proposed standard data set requirement, institutions may have to link records from the CIF and the deposit systems or provide the key or linking elements so data from the CIF can be linked to individual account owners. This would be more complex than a standard data set that only included items from the deposit systems, but it would yield substantial benefits to the FDIC. Once the systems had been developed and tested, how much longer would it take for an institution to prepare a standard data set that included CIF and deposit system items, compared to one that included only deposit system items?

The FDIC would require transmitted deposit balances to reconcile to the actual trial balance, both balance dollar amounts and the record count. How does reconciliation affect timeliness? Can the process be developed in advance and automated?

What is the most effective way of transmitting data to the FDIC?

Option 2

Option 2 would require each Covered institution to have in place on an ongoing basis the ability to:

• Supply to the FDIC a standard data set mapped and formatted to FDIC specifications and reconciled to the institution's actual trial balance. (See Appendix B for a preliminary list of data to be included in the standard data set.)

• Calculate and place provisional holds automatically according to the FDIC's specifications at the end of processing on any given business day.

• Remove provisional holds automatically according to the FDIC's specifications at the end of processing on any given business day.

• Add and remove automatically the FDIC-supplied holds/debits on an as-needed basis.

The primary difference between Options 1 and 2 rests with the omission in Option 2 of the requirements to supply a unique identifier for each depositor and identify the insurance category of each deposit account. The data elements included in the standard data set also may vary somewhat from those in Appendix B.

Question: What is the likely cost of Option 2? What are the potential cost savings to Covered institutions from Option 2 compared to Option 1? Are there any likely operational difficulties in implementing Option 2?

Option 3

Option 3 would require the very largest of the Covered institutions to know the insurance status of deposit accounts at any given point in time.[12]

[11] Options 2 and 3 also would involve a testing process to determine the overall quality of the results.

[12] This requirement would not include deposit accounts for which the Covered institution does not ordinarily possess the information to make the determination, such as accounts with pass-through coverage (brokered deposit accounts and trust

Upon failure, the institution must be able to place debits/holds automatically for uninsured deposits in an amount specified by the FDIC, so that the institution can be operational the following business day. The FDIC is considering this option only for the largest 10 or 20 Covered institutions while, if used, the remaining Covered institutions would meet requirements similar to those outlined under Options 1 or 2. Limiting the scope of this option to the largest Covered institutions would help mitigate implementation costs as well as speed the insurance determination process for the largest, most complex of the Covered institutions.

This option would be more expensive for Covered institutions than Options 1 or 2, but it could yield additional benefits. Depositors could benefit from the institutions' ability to provide information about insurance status. If an institution were to fail, this option provides that the insurance status of most depositors would be known at the point of failure. As a consequence, some depositors could receive a larger portion of their funds more quickly under this option compared to the provisional hold process contemplated in Options 1 and 2.

As with Options 1 and 2, the FDIC would test the accuracy of systems put in place if this Option is adopted. Under these circumstances the FDIC should be able to rely upon the results generated by the insured institution for the initial deposit insurance determination.

Questions. How expensive would this option be compared to Options 1 or 2? Do the additional benefits merit the additional cost? Are there other reasons why this approach should be preferred or rejected? How extensive would the FDIC audit have to be to determine whether institutions are correctly calculating insurance coverage?

Other Potential Options

The FDIC invites comments on all aspects of this proposal. In addition, the FDIC solicits suggestions on alternative means of meeting the objective of conducting a timely insurance determination on Covered insured institutions.

Question. Is there a different approach that would accomplish the same objective at a lower financial and regulatory cost?

APPENDIX A.—PRIMARY FDIC DEPOSIT INSURANCE CATEGORIES

Insurance category	Description
1. Single Ownership	Funds owned by a natural person including those held by an agent or custodian, sole proprietorship accounts and accounts that fail to qualify in any other category below. Coverage extends to $100,000 per depositor.
2. Joint Ownership	Accounts jointly owned as joint tenants with the right of survivorship, as tenants in common or as tenants by the entirety. Coverage extends to $100,000 per co-owner. • The account title generally must be in the form of a joint account (''Jane Smith & John Smith''). • Each of the co-owners must sign the account signature card. (This requirement has exceptions, including certificates of deposit.) • The withdrawal rights of the co-owners must be equal.
3. Revocable Trust	Accounts whereby the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries. For each owner, coverage extends to $100,000 per beneficiary. • The title of the account must include ''POD'' (payable-on-death) or ''trust'' or some similar term. • The beneficiaries must be specifically named in the account records. (This requirement applies to informal ''POD'' accounts but does not apply to formal ''living trust'' accounts.) • The beneficiaries must be the owner's spouse, children, grandchildren, parents or siblings.
4. Irrevocable Trust	Accounts established pursuant to an irrevocable trust agreement. Coverage extends to $100,000 per beneficiary. • The account records must indicate that the funds are held by the trustee pursuant to a fiduciary relationship. • The account must be supported by a valid irrevocable trust agreement. • Under the trust agreement, the grantor of the trust must retain no interest in the trust funds. • For ''per beneficiary'' coverage, the interest of the beneficiary must be ''non-contingent.''
5. Self-Directed Retirement ..	Individual retirement accounts under 26 U.S.C. § Retirement 408(a), eligible deferred compensation plans under 26 U.S.C. § 457, self-directed individual account plans under 29 U.S.C. § 1002 and self-directed Keogh plans under 26 U.S.C. § 401(d). Coverage extends to $100,000 per owner or participant. • The account records must indicate that the account is a retirement account. • The account must be an actual retirement account under the cited sections of the Tax Code.
6. Corporation, Partnership or Unincorporated Association.	Accounts of a corporation, partnership or unincorporated association. Coverage extends to Unincorporated $100,000 per entity. • The account records must indicate that the entity is the owner of the funds or that the nominal accountholder is merely an agent or custodian (with the entity's ownership interest reflected by the custodian's records). • The entity must be engaged in an ''independent activity.'' • The entity must not be a sole proprietorship (which is treated as a single ownership account).
7. Employee Benefit Plan	Deposits of an employee benefit plan as defined at 29 U.S.C. 1002, including any plan described at 26 U.S.C. 401(d), and also deposits of an eligible deferred compensation plan described at 26 U.S.C. 457. Coverage extends to $100,000 per participant. • The account records must indicate that the funds are held by the plan administrator pursuant to a fiduciary relationship. • The account must be supported by a valid employee benefit plan agreement. • For ''per participant'' coverage: ○ The interests of the participants must be ascertainable and non-contingent. ○ The institution must have been well capitalized (or adequately capitalized in some cases) when the initial and subsequent deposits were made.

accounts, for example) and certain informal trust accounts (also referred to as either ''payable-on-death'' or ''in-trust-for'' accounts) where information on beneficiaries may be necessary for the determination.

APPENDIX A.—PRIMARY FDIC DEPOSIT INSURANCE CATEGORIES—Continued

Insurance category	Description
8. Public Unit	Funds of ''public units'' or ''political subdivisions'' thereof. Coverage extends to $100,000 for interest bearing deposits and $100,000 for non interest bearing deposits for each official custodian of the public unit or subdivision. • For separate coverage for the non interest bearing deposits, the insured financial institution must be located (including branch locations) in the same state as the public unit. • The account records must indicate that the funds are held by the custodian in a custodial capacity. • For ''per custodian'' coverage, the custodian must be a separate ''official custodian.'' • For ''per subdivision'' coverage, the governmental entity must be a separate ''political subdivision.''

Appendix B. Data Elements Included in the Standard Data Set

This appendix presents a standard data request containing proposed data fields to be used by the FDIC to determine the insured status of each account. The proposed file is divided into four record types: Header, Deposit, Hold, and Customer. It would be preferred that all data are included in one file but, if necessary due to system constraints, multiple files might be used. For identification purposes the Header record in each file must be created. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated.

The following is a list of the data fields proposed to be included in the file with explanations of the data being requested. The fields are listed in the order they would appear in the file.

Header Record

The Header Record provides information specific to the institution, the effective date of the data and the date and time the file was created. The Header Record must be at the beginning of each file if multiple files are submitted.

Field name	FDIC field description
1. HD_Record_ID	Record ID Enter ''1'' in this field.
1. HD_Acct_Numb	Header Account Number Enter ''0000000000000000'' in this field.
1. HD_File_Date	File Date—This field identifies the ''as-of-date'' of the file. Enter the effective date of the data being supplied in this request. Must be entered in MMDDYYYY format.
1. HD_FI_Name	Financial Institution Name—Enter the institution's name as it appears on the FDIC Certificate.
1. HD_FI_Number	Financial Institution Number—Enter the institution's FDIC certificate/institution number.
1. HD_Dt_Created	Date & Time Created—Enter the date and time in MMDDYYYYHHmmSS format.

Deposit Record

The Deposit Record provides information specific to deposit account balances and account data. Fields 14–27 relate to the account name and address information. Some systems provide for separate fields for account title/name, address, city, state, ZIP, and country, all of which are parsed out. Other systems may simply provide multiple lines for name, address, city, state, ZIP, with no distinction. Populate fields that best fit system data—either fields 14–21 or fields 22–27.

Field name	FDIC field description
0. DP_Record_ID	Record ID—Enter ''2'' in this field.
0. DP_Acct_Numb	Account Number—The unique number assigned by the institution to this account.
0. DP_Acct_Numb_ID	Account Number ID—Account number field that further identifies the account. May be used to identify separate deposits tied to this account where there are different processing parameters, *i.e.* interest rates, maturity dates, but all owners are the same.
0. DP_Tax_ID	Tax ID—Provide the tax ID number maintained on the account. For consumer accounts, typically, this would be the primary account holder's Social Security number. For business accounts it would be the Federal tax identification number.
0. DP_Tax_Code	Tax ID Code—This field should identify the type of the tax ID number. Valid values are: • S = Social Security number. • T = Federal tax identification number. • O = Other.
0. DP_Branch	Branch—This field should identify the branch associated with the account. It may be where the account was originally opened.
0. DP_Cost_Center	Cost Center—Identifier used for organization reporting or ownership of the account. It may be the same as the Branch number.
0. DP_Owner_Ind	Customer Owner Indicator—This field is used to identify the type of ownership. This information will assist the FDIC to further categorize the account into the FDIC insurance categories. Valid values are: • S = Single or primary owner • J = Joint or secondary owner (also include DBA's in this code) • T = Trust account • P = Partnership account • C = Corporation. • B = Brokered deposits • O = Other

Field name	FDIC field description
0. DP_Prod_Type	Product Type—This field is used to identify the type of the product from a customer perspective. This information will assist the FDIC to properly categorize the account into the FDIC insurance categories. Valid values in the field are: • CON = Personal or consumer accounts. • BUS = Business. • NPR = Non-profit accounts. • GOV = Accounts held by government entities (city, state, political subdivisions). • FIN = Accounts held by other financial institutions. • INT = Internal accounts or bank-owned accounts. • OTH = Other.
0. DP_Prod_Cat	Product Category—This is a broad classification of products and accounts. Valid values in the field are: • DDA = Non-interest bearing checking accounts. • NOW = Interest bearing checking accounts. • MMA = Money market accounts. • SAV = Savings accounts and money market savings accounts. This includes any interest bearing accounts with regulated withdrawal requirements. • CDS = Time deposit accounts and certificate of deposit accounts. Include any accounts with specified maturity dates that may or may not be renewable. • REP = Repurchase agreements. Include any accounts supported by an agreement to repurchase the deposit at a specified date and interest rate, and is secured by designated securities owned by the institution. • IRA = Individual retirement accounts. • OTH = Other.
0. DP_Ret_Ind	Retirement Indicator—This field is used to identify whether the account is considered any type of retirement product. Valid values are: • Y = Yes, the account is a retirement account. • N = No, the account is not a retirement account.
0. DP_Stat_Code	Status Code—Include only the following status or condition of the account. Valid values are: • O = Open. • C = Closed. • D = Dormant. • I = Inactive
0. DP_Short_Name	Short Name—This field will assist in creating an alpha list of accounts. The format preference for personal accounts is last name or partial last name followed by first name. For business accounts enter the name of the account. Variances to this should be explained in a Mapping document. If a similar field does not exist, create a ''Short Name'' by concatenating data using related fields.
0.DP_Acct_Title_1	Account Title Line 1—Two lines (fields 14 & 15) are provided to enter account styling or titling of the account. These data will be used to identify the owners of the account.
0. DP_Acct_Title_2	Account Title Line 2—Additional account title line.
0. DP_Address_Line_1	Address Line 1—Two lines (fields 16 & 17) are provided to enter the street, PO box, suite number, etc. of the address.
0. DP_Address_Line_1	Address Line 2—Additional address line.
0. DP_City	City—Enter the city associated with the mailing address.
0. DP_State	State—Enter the state abbreviation associated with the mailing address.
0. DP_ZIP	ZIP—This field allows for the ZIP+4 code associated with the mailing address.
0. DP_Country	Country—This field should identify the country associated with the mailing address. Provide the name of the country or the standard country code.
0. DP_NA_Line_1	Name or Address Line 1—Six lines (fields 22–27) are provided to enter the name and/or the account mailing address if your system does not distinguish particular address lines.
0. DP_NA_Line_2	Name & Address Line 2—Additional name and/or address line.
0. DP_NA_Line_3	Name & Address Line 3—Additional address line.
0. DP_NA_Line_4	Name & Address Line 4—Additional address line.
0. DP_NA_Line_5	Name & Address Line 5—Additional address line.
0. DP_NA_Line_6	Name & Address Line 6—Additional address line.
0. DP_Cur_Bal	Current Balance—This amount represents the current balance in the account at the end of business on the effective date of this file. This balance should not be reduced by float or holds. For CDs and time deposits, it should reflect the principal balance plus any interest paid and available for withdrawal that is not already included in the principal. The total of all Current Balances in this file should reconcile to the total liabilities on the financial institutions general ledger.
0. DP_Int_Rate	Interest Rate—The current interest rate in effect for interest bearing accounts.
0. DP_Bas_Days	Basis Days—Indicates the basis on which interest is to be paid. Valid values are: • 1 = 30/360. • 2 = 30/365. • 3 = 365/365 (actual/actual).
0. DP_Int_Type	Interest Type—Indicates the type of interest to be paid. Valid values are: • S = Simple. • D = Daily compounding. • C = Continuous compounding. • O = Other.
0. DP_Int_Factor	Interest Rate Daily Factor—This field should reflect the daily interest rate factor for generating interest.
0. DP_Acc_Int	Accrued Interest—This amount should reflect the amount of interest that has been earned but not yet paid to the account as of the date of the file.
0. DP_Lst_Int_Pd	Date Last Interest Paid—This should indicate the date thru which interest was last paid to the account. Must be entered in MMDDYYYY format.

Field name	FDIC field description
0. DP_Int_Pd_YTD	Interest Paid YTD—The amount of interest that has been paid to the account this year. Must be entered in MMDDYYYY format.
0. DP_Nxt_Mat	Date Next Maturity—For CD and time deposit accounts, this is the next date the account is to mature. For non-renewing CDs that have matured and are waiting to be redeemed this date may be in the past. Must be entered in MMDDYYYY format.
0. DP_Res_Acct_Ind	Reserve Account Indicator—Identifies accounts with a reserve or overdraft protection feature tied to this account and is not identified by another account number or identifier. It is not an Overdraft Limit that allows the deposit account to be overdrawn. Rather, it is considered a ''loan'' to be advanced to the account in the event of an overdraft.
0. DP_Res_Out_Bal	Reserve Account Outstanding Balance—Provide the outstanding balance of a reserve or overdraft protection feature. This balance is not reflected in the accounts deposit current balance. This is not an Overdraft Limit. Rather, in the event that proceeds are advanced to cover an overdraft, the balance that remains outstanding to be paid back to the account. This balance may include a finance charge.
0. DP_Lst_Deposit	Date Last Deposit—This date should reflect the last deposit transaction posted to the account. For example, a deposit that included checks and/or cash. Must be entered in MMDDYYYY format.
0. DP_Open_Dt	Account Open Date—This date should reflect the date the account was opened. If the account had previously been closed and re-opened, this should reflect the most recent re-opened date. Must be entered in MMDDYYYY format.

Hold Record

The Hold Record provides information related to any holds on an account. If an account has more than one hold, additional Hold Records may be provided.

Field name	FDIC field description
2. HD_Record_ID	Record ID—Enter ''3'' in this field.
2. HD_Acct_Numb	Account Number—The account number associated with the hold. This should be the same as the account number in Deposit Record field #2.
2. HD_Hold_Amt	Hold Amount—Dollar amount of the hold.
2. HD_Hold_Reason	Hold Reason—Reason for the hold. Valid values are: LN = Loan collateral hold. UC = Uncollected funds hold. OT = Other—bank defined.
2. HD_Hold_Desc	Hold Description—Description of the hold available on the system.
2. HD_Hold_Days	Hold Days—The Number of days the hold was/is intended. May be used instead of an expiration date.
2. HD_Hold_Start_Dt	Hold Start Date—The date the hold was initiated. Must be entered in MMDDYYYY format.
8. HD_Hold_Exp_Dt	Hold Expiration Date—The date the hold is to expire. Must be entered in MMDDYYYY format. May be used instead of number of hold days.

Customer Record

The Customer Record provides information related to each customer associated with an account. Therefore, multiple customer records associated with each deposit account number found in the Deposit Record should be indicated.

Fields 8–11 relate to the customer name. Some systems provide for separate fields for account name: ''last name'' and ''first name'' for personal accounts or ''company name'' for business accounts, all of which are parsed out. Other systems simply provide one line for a name. Populate fields that best fit system data.

Fields 12–17 relate to customer address information. Some systems provide for separate fields for address, city, state, ZIP, and country, all of which are parsed out. Other systems may simply provide multiple lines for name, address, city, state, ZIP, with no distinction. Fields 14–18 are provided if your systems do not distinguish between the different elements associated with a name and address. Populate fields that best fit system data—either fields 12–17 or fields 14–18.

Field name	FDIC field description
1. CS_Record_ID	Record ID—Enter ''4'' in this field.
2. CS_Acct_Numb	Account Number—The deposit account number. Should be the same as the account number in Deposit Record field #2.
3. CS_Cust_Numb	Customer Number—The number assigned to the customer in the customer information system.
4. CS_Tax_ID	Customer Tax ID Number—Provide the tax ID number on record for the customer.
5. CS_Tax_Code	Customer Tax ID Code—This field should identify the type of the tax ID number of the customer. Valid values are: • S = Social Security number. • T = Federal tax identification number. • F = Foreign accounts. • O = Other.

Field name	FDIC field description
6. CS_Rel_Code	Relationship Code—This code indicates how the customer is related to the account. Valid values are: • P = Primary owner. • S = Secondary owner. • B = Beneficiary. • T = Trustee. • O = Other. • U = Unknown.
7. CS_Bene_Code	Beneficiary Type Code—If the customer is considered a beneficiary, enter the type of account associated with this customer. This includes beneficiaries on retirement accounts, trust accounts, minor accounts, and payable-on-death accounts. Valid values are: • I = IRA. • T = Trust—irrevocable. • R = Trust—revocable. • M = Uniform gift to minor. • P = Payable on death. • O = Other.
8. CS_Name	Customer Name—The name of the customer. Provide in the Mapping document the typical format the bank practices for business customers and personal/individual customers; *i.e.*, last name first, first name last.
9. CS_Last_Name	Customer Last Name—The last name of the individual/personal customer.
10. CS_First_Name	Customer First Name—The first name of the individual/personal customer.
11. CS_Comp_Name	Customer Company Name—The company name of the business customer.
0. CS_Address_1	Address Line 1—Two lines (fields 10 & 11) are provided to enter the street, P.O. box, suite number, *etc.* of the address.
0. CS_Address_2	Address Line 2—Additional address field.
0. CS_City	City—Enter the city associated with the mailing address of the customer.
0. CS_State	State—Enter the state abbreviation associated with the mailing address of the customer.
0. CS_ZIP	ZIP—This field allows for the ZIP+4 code associated with the mailing address of the customer.
0. CS_Country	Country—This field should identify the country associated with the mailing address. Provide the name of the country or the standard country code.
0. CS_NA_Line_1	Customer Name & Address Line 1—The name and/or address of the customer.
0. CS_NA_Line_2	Customer Name & Address Line 2—Additional name and/or address line.
0. CS_NA_Line_3	Customer Name & Address Line 3—Additional address line.
0. CS_NA_Line_4	Customer Name & Address Line 4—Additional address line.
0. CS_NA_Line_5	Customer Name & Address Line 5—Additional address line.
0. CS_Birth_Dt	Customer Birth Date—The birth date on record for the customer. Must be entered in MMDDYYYY format.
0. CS_Telephone Customer	Telephone Number—The telephone number on record for the customer.
0. CS_Email	Customer Email Address—The email address on record for the customer.

* * * * *

Dated at Washington, DC, this 5th day of December, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–23986 Filed 12–12–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23282; Directorate Identifier 2005–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200 and –300 series airplanes. This proposed AD would require installing clamps on certain end caps of the overhead distribution ducts, and doing other specified and related investigative actions as necessary. This proposed AD results from finding that the end caps of the overhead distribution ducts for the air conditioning system were not bonded to the ducts with an adhesive. We are proposing this AD to detect and correct loosened end caps, which could change the air flow balance in the airplane. During a smoke event in the cargo or main electronics compartments, the incorrect balance of air flow could change the smoke clearance air capacity and result in smoke and toxic fumes penetrating the flight deck and main cabin.

DATES: We must receive comments on this proposed AD by January 27, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–23282; Directorate Identifier 2005–NM–210–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD.

Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit http://dms.dot.gov.

Examining the Docket

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

Discussion

We have received a report indicating that the airplane manufacturer found that the end caps of the overhead distribution ducts of the air conditioning system were not bonded to the ducts with an adhesive. The parts manufacturer determined from a records check that none of the overhead duct assemblies had end caps bonded to the ducts. Instead, the overhead duct assemblies had been delivered with plastic tie straps to hold the end caps onto the ducts. In some cases, the airplane manufacturer's mechanics removed the plastic tie straps from the end caps because the tie straps are not specified on the overhead duct assembly drawing. The bead on the end of ducts alone will not keep the end caps from loosening. A loosened end cap could change the air flow balance in the airplane. This condition, if not corrected, could change the smoke clearance air capacity during a smoke event in the cargo compartment or main electronics compartments and result in smoke and toxic fumes penetrating the flight deck and main cabin.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletins 757–21–0106 (for Model 757–200 series airplanes) and 757–21–0107 (for Model 757–300 series airplanes), both dated March 24, 2005. Boeing Special Attention Service Bulletin 757–21–0106 describes procedures for installing clamps on the end caps of the overhead distribution ducts at stations 864.9, 866.6, and 875. Boeing Special Attention Service Bulletin 757–21–0107 describes procedures for installing clamps on the end caps of the overhead distribution ducts at stations 864.88 and 875. The service bulletins also describe procedures for doing other specified and related investigative actions if necessary. The other specified actions include the following:

- Removing any tie straps, if installed, from the end caps of the overhead distribution ducts.
- Pushing each end cap against the end of the overhead duct all the way around.
- Torquing the clamps.

The related investigative actions include the following:

- Visually inspecting the end caps to ensure that each end cap has been pushed against the overhead duct all the way around.
- Ensuring that there is no air leakage from the end caps of the overhead ducts in the flight and passenger compartments in accordance with certain chapters of the Boeing 757 Airplane Maintenance Manual.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Clarification of Compliance Time

The service bulletins specify installing the clamps in 36 months or less, or 12,000 flight hours or less from the release date of the service bulletin. However, the proposed AD would require installing the clamps within 12,000 total flight hours or within 36 months after the effective date of this AD, whichever is first.

Clarification of Inspection Terminology

Figure 1 of both service bulletins specifies to inspect the end caps ''visually.'' This proposed AD, however, would require doing a general visual inspection of the end caps. Paragraph 3.A. of the service bulletin includes the definition for a general visual inspection.

Costs of Compliance

There are about 63 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 37 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would cost between $20 and $40 per airplane, depending on airplane configuration. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $3,145 and $3,885, or between $85 and $105 per airplane, depending on airplane configuration.

Authority for this Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–23282; Directorate Identifier 2005–NM–210–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Boeing Model 757–200 series airplanes, having certain variable numbers as identified in Boeing Special Attention Service Bulletin 757–21–0106, dated March 24, 2005.

(2) Boeing Model 757–300 series airplanes, having certain variable numbers as identified in Boeing Special Attention Service Bulletin 757–21–0107, dated March 24, 2005.

Unsafe Condition

(d) This AD results from finding that the end caps of the overhead distribution ducts for the air conditioning system were not bonded to the ducts with an adhesive. We are issuing this AD to detect and correct loosened end caps, which could change the air flow balance in the airplane. During a smoke event in the cargo or main electronics compartments, the incorrect balance of air flow could change the smoke clearance air capacity and result in smoke and toxic fumes penetrating the flight deck and main cabin.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200 series airplanes: Boeing Special Attention Service Bulletin 757–21–0106, dated March 24, 2005; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–21–0107, dated March 24, 2005.

Install Clamps

(g) Within 12,000 flight hours or 36 months after the effective date of this AD, whichever is first: Install clamps on the end caps of the overhead distribution ducts of the air conditioning system at stations 864.88, 864.9, 866.6, and 875, as applicable, and before further flight do any other specified and related investigative actions as applicable, by doing all of the applicable actions specified in the applicable service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on December 6, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23956 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23284; Directorate Identifier 2005–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. The existing AD requires one-time inspections of the inner webs and flanges at frames 15, 18, 41, and 43 for evidence of corrosion or cracking; and corrective actions if necessary. This proposed AD would instead require new repetitive inspections and expand the area to be inspected. This proposed AD would also expand the applicability and provide an optional action that would extend the repetitive inspection interval. This proposed AD results from a report indicating that in some cases the inspections required by the existing AD revealed no damage, yet frame corrosion and cracking were later found during scheduled maintenance in the two forward fuselage frames 15 and 18. We are proposing this AD to prevent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 12, 2006.

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

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–23284; Directorate Identifier 2005–NM–163–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

On December 29, 2003, we issued AD 2004–01–07, amendment 39–13421 (69 FR 869, January 7, 2004), for certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That AD requires one-time inspections of the inner webs and flanges at frames 15, 18, 41, and 43 for evidence of corrosion or cracking; and corrective actions if necessary. That AD resulted from a report of cracking discovered at the inner webs and flanges at frame 18, caused by an ingress of moisture and subsequent corrosion. We issued that AD to detect and correct corrosion and cracking of the inner webs and flanges at frames 15, 18, 41, and 43, which could result in reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–01–07, we have learned that in some cases the required inspections revealed no damage, yet frame corrosion and cracking were later found during scheduled maintenance in the two forward fuselage frames 15 and 18. Consequently, BAe Systems developed the new inspections described below.

Relevant Service Information

The manufacturer has issued BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005. In contrast to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–165, dated December 11, 2001 (cited in AD 2004–01–07), this new service bulletin provides a more rigorous inspection of the frame flanges and an overall inspection of the frames; expands the inspection area to the full circumference of the frame; and includes the optional application of improved corrosion-preventive treatment, which would extend the repetitive inspection interval. The service bulletin describes procedures for repetitive inspections of frames 15, 18, 41, and 43 to detect signs of corrosion (including cracks, blistering, or flaking paint).

- Inspection 1 involves a high-frequency eddy current (HFEC) inspection of the frame inner flange and a detailed visual inspection of all visible surfaces of the frame below the floor.
- Inspection 2 involves an HFEC inspection of the frame inner flange and a detailed visual inspection of all visible surfaces of the frame at the floor level and above.
- Inspection 3 involves a detailed visual inspection of all accessible frame surfaces at the floor level to 6 inches above the floor level. If Inspection 3 is done in lieu of Inspection 2, Inspection 2 must eventually be done within 2 years.

Corrective actions for corrosion include blending to the limits specified in the structural repair manual (SRM), and reprotecting all base metals to SRM specifications. The service bulletin provides for an optional corrosion-preventive treatment, which would extend the repetitive inspection interval.

The service bulletin recommends that the oldest airplanes be inspected within 6 months, and newer airplanes within 12 or 24 months, depending on specified criteria. The service bulletin provides additional time to complete the inspections for operators with more than 6 airplanes over 180 months in their fleet. The repetitive intervals range from 12 to 48 months, depending on specified criteria.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2005–0019, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2004–01–07. This proposed AD would require accomplishing the actions specified in Service Bulletin ISB.53–182, described previously, except as discussed below.

Difference Between the Proposed AD and Service Information

The service bulletin specifies compliance times relative to the date of issuance of the service bulletin; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD.

Clarification of Inspection Terminology

The ''detailed visual inspection'' specified in the service bulletin is referred to as a ''detailed inspection'' in this proposed AD. Note 1 of this

proposed AD defines this type of inspection.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplaine	Number of U.S.-registered airplanes	Fleet cost
HFEC inspection, per inspection cycle.	5	$65	None	$325	55	$17,875
Detailed inspection, per inspection cycle.	3	65	None	195	55	10,725

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13421 (69 FR 869, January 7, 2004) and adding the following new airworthiness directive (AD):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–23284; Directorate Identifier 2005–NM–163–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 12, 2006.

Affected ADs

(b) This AD supersedes AD 2004–01–07.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that in some cases the inspections required by AD 2004–01–07 revealed no damage, yet frame corrosion and cracking were later found during scheduled maintenance in the two forward fuselage frames 15 and 18. We are issuing this AD to prevent reduced structural integrity of the airplane.

Compliance

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

Inspections

(f) Use high-frequency eddy current and detailed methods to inspect for signs of corrosion of frames 15, 18, 41, and 43, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005. Inspect at the applicable time specified in 1.D. ''Compliance'' of the service bulletin. Application of corrosion-preventive treatment, in accordance with the service bulletin, extends the repetitive inspection interval, as specified in Table 2 in 1.D. ''Compliance'' of the service bulletin.

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

Corrective Action

(g) If any discrepancy is found during any inspection required by paragraph (f) of this AD: Before further flight, perform applicable related investigative/corrective actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005, except as required by paragraph (h) of this AD.

Exceptions to Service Bulletin Specifications

(h) If the service bulletin referenced in this AD specifies to contact the manufacturer for appropriate action, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

(i) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

(j) Where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. And where the service bulletin specifies a compliance time ''since date of construction'' of the airplane, this AD requires compliance since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(l) British airworthiness directive G–2005–0019, dated July 6, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on December 6, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23955 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23283; Directorate Identifier 2005–NM–185–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all EMBRAER Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This proposed AD would require repetitive inspections of the pitot static heating relay K0057 for damage to the pin-type contacts, relay enclosure, and finishing material and corrective actions if necessary. This proposed AD also would require doing a terminating modification, which ends the repetitive inspections. This proposed AD results from a report of a burning drain hose and smoke caused by an overheated pitot static heating relay. We are proposing this AD to prevent overheating of a certain pitot static heating relay, which could result in the burning of the windowsill drain hoses and consequent smoke or fire in the airplane cockpit.

DATES: We must receive comments on this proposed AD by January 12, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–23283; Directorate Identifier 2005–NM–185–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The DAC advises that a pitot static heating relay overheated, causing a direct-vision windowsill drain hose to burn. This condition, if not corrected, could result in smoke or fire in the airplane cockpit.

Relevant Service Information

EMBRAER has issued the following service information:

EMBRAER service bulletin—	Dated—	Model—
145–30–0041	April 20, 2005	EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes.
145–30–0042	April 18, 2005.	
145LEG–30–0011	April 20, 2005	EMB–135BJ airplanes.
145LEG–30–0012	April 18, 2005.	

EMBRAER Service Bulletins 145–30–0042 and 145LEG–30–0012 describe procedures for doing repetitive visual inspections of pitot static heating relay K0057 for damage to the pin-type contacts, relay enclosure, and finishing material; and doing the corrective action if necessary. The visual inspection includes the following actions:

- Inspecting the sides of the silicone gasket for melted points or material stuck to the surface of the silicone gasket.
- Inspecting the relay enclosure for bellied surfaces, dents, and any crack in the paint of the enclosure.
- Inspecting the pin-type contacts for discolored, loosened, or missing contacts.
- Inspecting contact bases of the relay for any crack, loose material, or damaged sealant.
- Inspecting the pin-type contacts for any contaminants.
- Inspecting the relay surface where the pin-type contacts attach for any stuck material or roughness on the relay surface.

The corrective action is to replace the pitot static heating relay K0057 with a new part if any damage to the pin-type contacts, relay enclosure, and finishing material is found.

EMBRAER Service Bulletins 145–30–0041 and 145LEG–30–0011 describe procedures for doing a modification, which ends the repetitive inspections. The modification includes the following actions:

- Replacing the direct-vision windowsill drain hoses and tiedown straps with new, improved drain hoses and tiedown straps.
- Reworking a certain drain hose and installing a new hose, tube, and tiedown straps.
- For Model EMB–135BJ airplanes, the modification in EMBRAER Service Bulletins 145LEG–30–0011 also includes rerouting the drain hoses of the left and right cockpit horizontal linings.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–08–04, dated September 5, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletins.''

Difference Between the Proposed AD and Service Bulletins

EMBRAER Service Bulletins 145–30–0042 and 145LEG–30–0012 specify contacting the manufacturer if damage to components for the relay support is found. These service bulletins also specify returning any relay that fails an inspection to the airplane manufacturer. However, this proposed AD would not require those actions.

Clarification of Inspection Terminology

The ''visual inspection'' specified in the EMBRAER service bulletins is referred to as a ''general visual inspection'' in this proposed AD. We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplanes	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle	1	$65	None	$65	651	$42,315, per inspection cycle.
Terminating modification	2	$65	$270	$400	651	$260,400.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–23283; Directorate Identifier 2005–NM–185–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report of a burning drain hose and smoke caused by an overheated pitot static heating relay. We are issuing this AD to prevent overheating of a certain pitot static heating relay, which could result in the burning of the windowsill drain hoses and consequent smoke or fire in the airplane cockpit.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins identified in Table 1 of this AD, as applicable:

TABLE 1.—SERVICE BULLETIN REFERENCES

For model—	For the actions specified in—	EMBRAER service bulletin—
EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP airplanes.	paragraph (g) of this AD	145–30–0042, dated April 18, 2005.
	paragraph (i) of this AD	145–30–0041, dated April 20, 2005.
EMB–135BJ airplanes	paragraph (g) of this AD	145LEG–30–0012, dated April 18, 2005.
	paragraph (i) of this AD	145LEG–30–0011, dated April 20, 2005.

Repetitive Inspections

(g) Within 600 flight hours or 180 days after the effective date of this AD, whichever is first: Do a general visual inspection of pitot static heating relay K0057 for damage to the pin-type contacts, relay enclosure, and finishing material, and do the corrective action as applicable, by accomplishing all of the applicable actions specified in the applicable service bulletin; except as provided by paragraph (h) of this AD. The corrective actions must be done before further flight. Repeat the inspection thereafter at intervals not to exceed 500 flight hours, until the terminating modification required by paragraph (i) of this AD is accomplished.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Service Bulletin Exceptions

(h) Although EMBRAER Service Bulletin 145–30–0042, dated April 18, 2005, and EMBRAER Service Bulletin 145LEG–30–0012, dated April 18, 2005, specify contacting the manufacturer if damage to components for the relay support is found and also specify returning any relay that fails an inspection to the airplane manufacturer, this AD does not include those requirements.

Terminating Modification

(i) Within 6,000 flight hours or 30 months after the effective date of this AD, whichever is first: Do the applicable actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD. Accomplishing all the applicable actions specified in this paragraph terminates the inspections required by paragraph (g) of this AD.

(1) For all airplanes, replace the direct-vision windowsill drain hoses having part number (P/N) 123–15435–401 and –403 with new, improved hoses having P/N 145–13044–001 and P/N 145–13047–001, as applicable, and replace the tiedown straps with new tiedown straps, in accordance with Figure 1 of the service bulletin.

(2) For all airplanes, rework the drain hose having P/N 123–15435–405, in accordance with Figure 1 of the service bulletin.

(3) For Model EMB–135BJ airplanes, reroute the drain hoses of the left and right cockpit horizontal linings, in accordance with Figure 2 of the service bulletin.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Brazilian airworthiness directive 2005–08–04, dated September 5, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on December 6, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23954 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20220; Directorate Identifier 2004–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Airplanes

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

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

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain Aerospatiale Model ATR42–200, –300, and –320 airplanes. The original NPRM would have required doing repetitive inspections of the upper arms of the main landing gear (MLG) side braces for missing or inadequately bonded identification plates; replacing the upper arm if necessary; and replacing the side brace assembly with a modified part. The original NPRM resulted from an operator who reported experiencing an unlock warning for the MLG on the right side of the airplane. This action revises the original NPRM by proposing to require doing an ultrasonic inspection of the upper arm of the MLG side brace for any defects and related investigative/corrective actions if necessary, instead of replacing the upper arm if necessary. This action also adds airplanes to the applicability. We are proposing this supplemental NPRM to prevent cracking of the upper arms of the side braces of the MLG, which could result in failure of the MLG during landing and possible damage to the airplane and injury to the flightcrew and passengers.

DATES: We must receive comments on this supplemental NPRM by January 9, 2006.

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

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

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Include the docket number ''Docket No. FAA–2005–20220; Directorate Identifier 2004–NM–152–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to certain Aerospatiale Model ATR42–200, –300, and –320 airplanes. The original NPRM was published in the **Federal Register** on February 1, 2005 (70 FR 5081). The original NPRM proposed to require doing repetitive inspections of the upper arms of the main landing gear (MLG) side braces for missing or inadequately bonded identification plates; replacing the upper arm if necessary; and replacing the side brace assembly with a modified part.

Relevant Service Information

Since the original NPRM was issued, Messier-Dowty has issued Special Inspection Service Bulletin 631–32–181, Revision 2, dated June 3, 2005. (Messier-Dowty Special Inspection Service Bulletin 631–32–175, dated January 7, 2004, was referenced in the original NPRM as the appropriate source of service information for doing the repetitive inspections and replacements of the upper arms if necessary.) Revision 2 of the service bulletin describes procedures for doing repetitive visual inspections of the upper arms of the MLG side brace assemblies for missing or partially unstuck identification plates and beads of glue. If any identification plate or bead of glue is missing or partially unstuck, the service bulletin also describes procedures for doing an ultrasonic inspection of the upper arm of the MLG side brace for any defects and doing related investigative and corrective actions if necessary. The related investigative action is a visual inspection of the MLG side brace surface for any paint tears, scratches, or corrosion prior to accomplishing the ultrasonic inspection. The corrective actions include the following:

• If any paint tear, scratch, or corrosion is found on the surface of the upper arm, removing the contamination prior to doing the ultrasonic inspection.

• If the echo is less than 20%, restoring the plate areas and reidentifying the identification plate.

• If the echo is 20% or greater, replacing the MLG side brace with an MLG side brace equipped with an airworthy upper arm.

Accomplishing the actions specified in Messier-Dowty Special Inspection Service Bulletin 631–32–181, Revision 2, and the replacements in Messier-Dowty Service Bulletin 631–32–176, Revision 1, dated June 2, 2004, is intended to adequately address the unsafe condition. (Messier-Dowty Service Bulletin 631–32–176, Revision 1, was referenced in the original NPRM as the appropriate source of service information for replacing a side brace assembly with a modified part.) The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, mandated the service information and issued French airworthiness directive F–2005–106, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in France. French airworthiness directive F–2005–106 supersedes French airworthiness directive F–2004–006, dated January 7, 2004, which was referenced as related information in paragraph (l) of the original NPRM. French airworthiness directive F–2005–106 also adds new airplanes to the applicability. We have revised the applicability of the supplemental NPRM to match French airworthiness directive F–2005–106.

Clarification Between the Supplemental NPRM and Service Bulletin

Where Messier-Dowty Special Inspection Service Bulletin 631–32–181, Revision 2, specifies replacing a side brace with a side brace equipped with an airworthy upper arm, this supplemental NPRM proposes to replace it with a side brace equipped with an upper arm modified in accordance with Messier-Dowty Service Bulletin 631–32–176, Revision 1.

Clarification of Inspection Terminology

The ''visual inspection'' specified in Revision 2 of Messier-Dowty Special Inspection Service Bulletin 631–32–181 is referred to as a ''general visual inspection'' in this supplemental NPRM. We have included the definition for a general visual inspection in a note in the supplemental NPRM.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Comments

We have considered the following comments on the original NPRM.

Request to Use AMOC

One commenter requests that we revise the original NPRM to allow operators a means for mitigating any corrosion and reidentifying the upper arms of the MLG side braces, rather than proposing to require replacement of the upper arms. The commenter suggests that a combination of blending, coating, and a part identification method such as electro-etching would be a more appropriate solution to address the unsafe condition of the original NPRM. The commenter states that electro-etching would have minimal structural impact on the upper arms, while providing a permanent mark that can only be removed by grinding.

We partially agree. As stated previously, if any identification plate or bead of glue is missing or partially unstuck, this supplemental NPRM proposes to require doing an ultrasonic inspection of the upper arm of an MLG side brace for any defects (and doing related investigative and corrective actions if necessary), rather than proposing to replace the upper arm. Although, depending on the results of the ultrasonic inspection, operators may be required to replace the side brace assembly with a part modified in accordance with Messier-Dowty Service Bulletin 631–32–176, Revision 1. This supplemental NPRM also proposes to require modification of the side brace assemblies to terminate the repetitive visual inspections. However, under the provisions of paragraph (m) of the proposed final rule, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

Request to Withdraw NPRM

The same commenter believes that the original NPRM is an overreaction to a single event, the cause of which can still be speculated upon. The commenter also believes that any potential unsafe condition can be addressed by other means. We infer the commenter requests that we withdraw the original NPRM.

We do not agree. Although the original NPRM was prompted by one report, we have identified an unsafe condition that is likely to exist or develop on other products of the same type design. The affected identification plates are located in a high stress area where they could be torn down. When an identification plate is torn down, the protective treatment on the upper arm of the MLG side brace could be damaged or stripped. Damaged or stripped protective treatment could lead to corrosion and consequent cracking of the upper arms of the MLG side braces. We have also considered the action taken by the authority of the state of design and the manufacturer's recommendation. Cracking of the upper arms of the side braces of the MLG, if not corrected, could result in failure of the MLG during landing and possible damage to the airplane and injury to the flightcrew and passengers.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
General visual inspection, per inspection cycle.	1	$65	None	$65	54	$3,510, per inspection cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of side brace assemblies.	2 (1 hour per side brace).	65	$0	130	54	7,020

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket No. FAA–2005–20220; Directorate Identifier 2004–NM–152–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 9, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aerospatiale Model ATR42–200, –300, and –320 airplanes, certificated in any category; with main landing gear (MLG) side brace assemblies having part number (P/N) D22710000–( ) except –8, equipped with upper arms having P/N D56778–10.

Unsafe Condition

(d) This AD results from an operator who reported experiencing an unlock warning for the MLG on the right side of the airplane. We are issuing this AD to prevent cracking of the upper arms of the side braces of the MLG, which could result in failure of the MLG during landing and possible damage to the airplane and injury to the flightcrew and passengers.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For the general visual inspection and ultrasonic inspection specified in paragraphs (g) and (h) of this AD, respectively: Messier-Dowty Special Inspection Service Bulletin 631–32–181, Revision 2, dated June 3, 2005; and

(2) For the replacement specified in paragraph (j) of this AD: Messier-Dowty Service Bulletin 631–32–176, Revision 1, dated June 2, 2004.

Repetitive Inspections of Identification Plates

(g) Within 2 months or 500 flight hours after the effective date of this AD, whichever is first: Do a general visual inspection of the upper arms of the MLG side braces for inadequately bonded identification plates having P/Ns D61565–1, D61566–1, D61567–1, and D61568–1 and for any missing bead of glue, in accordance with the service bulletin. Thereafter at intervals not to exceed 2 months or 500 flight hours, whichever is first: Repeat the inspection of the upper arm of the MLG side brace for any side brace assembly that has not been inspected in accordance with paragraph (h) of this AD or replaced as required by paragraph (j) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Ultrasonic Inspection, if Necessary

(h) If any identification plate having P/N D61565–1, D61566–1, D61567–1, or D61568–1 or any bead of glue is missing or found inadequately bonded during any inspection required by paragraph (g) of this AD: Within 25 flight hours since the most recent general visual inspection, do an ultrasonic inspection of the upper arm of the MLG side brace for any defects and do any related investigative and corrective actions as applicable, by doing all of the applicable actions specified in Part B.(3) of the service bulletin; except where the service bulletin specifies replacing the side brace with a side brace equipped with an airworthy upper arm, replace it with a part modified in accordance with paragraph (j) of this AD. Any corrective actions must be done before further flight after doing the ultrasonic inspection.

Additional Ultrasonic Inspection for Certain Airplanes

(i) For airplanes on which the ultrasonic inspection specified in paragraph (h) of this AD has been accomplished in accordance with Messier-Dowty Special Inspection Service Bulletin 631–32–181, Revision 1, dated March 16, 2005: Within 25 flight hours after the effective date of the AD, do all the applicable actions specified in paragraph (h) of this AD, in accordance with Messier-Dowty Special Inspection Service Bulletin 631–32–181, Revision 2, dated June 3, 2005.

Replacement with a Modified Side Brace Assembly

(j) At the applicable compliance time specified in paragraphs (j)(1) or (j)(2) of this AD: Remove the side brace assembly and replace it with a part modified by doing all of the actions in the service bulletin. Replacement of a side brace assembly with a modified part terminates the repetitive inspections required by paragraph (g) of this AD for that modified side brace assembly only. If the side brace assembly of the left and right MLG is replaced with a modified part, no more work is required by paragraph (g) of this AD.

(1) For airplanes on which Messier-Dowty Service Bulletin 631–32–072 has not been accomplished: Before the accumulation of 15,000 total flight cycles on a side brace assembly since new or since last overhaul, or 96 months on a side brace assembly since new or since last overhaul, whichever is first.

(2) For airplanes on which Messier-Dowty Service Bulletin 631–32–072 has been accomplished: Before the accumulation of 18,000 total flight cycles on a side brace assembly since new or since last overhaul, or 96 months on a side brace assembly since new or since last overhaul, whichever is first.

Credit for Previous Service Bulletin

(k) Replacements done before the effective date of this AD in accordance with Messier-Dowty Service Bulletin 631–32–176, dated February 26, 2004, are acceptable for compliance with the corresponding requirements of paragraph (j) of this AD.

No Reporting Requirement

(l) Although Messier-Dowty Special Inspection Service Bulletin 631–32–181, Revision 2, dated June 3, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(n) French airworthiness directive F–2005–106, dated July 6, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on December 6, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23953 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2004–17005; Notice No. 05–16]

RIN 2120–AC84

Washington, DC Metropolitan Area Special Flight Rules Area; Notice of Public Meetings

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meetings.

SUMMARY: The FAA announces public meetings on its proposal to codify current flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area. The purpose of the public meetings is for the FAA to hear comments and gather information related to its Notice of Proposed Rulemaking (NPRM) published on August 4, 2005.

DATES: The public meetings will be held on the following dates. (Note that the meetings may be adjourned early if scheduled speakers complete their presentations in less time than is scheduled for the meetings.)

- January 12, 2006 from 1 p.m. until no later than 4 p.m., and from 6:30 p.m. until no later than 9 p.m. (The deadline to submit a request to make an oral statement is January 5, 2006.)
- January 18, 2006 from 1 p.m. until no later than 4 p.m., and from 6:30 p.m. until no later than 9 p.m. (The deadline to submit a request to make an oral statement is January 11, 2006.)

The written comment period will close on February 6, 2006.

ADDRESSES: The January 12, 2006 public meetings will be held at the Sheraton Colombia Hotel, 10207 Wincopin Circle, Columbia, MD 21044; telephone 410–730–3900; *http://www.starwoodhotels.com/sheraton/index.html.*

The January 18, 2006 public meetings will be held at the Washington Dulles Airport Marriott (Salon A, B, and C), 45020 Aviation Drive, Dulles, VA 20166; telephone 703–471–9500; *http://marriott.com/default.mi.*

You may submit written comments (identified by Docket Number FAA–2004–17005) using any of the following methods:

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

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion under ''Comments Invited'' in the **SUPPLEMENTARY INFORMATION** section of the FAA's August 5, 2005 NPRM.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings and questions regarding the logistics of the meetings should be directed to Noreen Hannigan, Office of Rulemaking (ARM–106), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7476, facsimile (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2005, the FAA published a Notice of Proposed Rulemaking (NPRM) titled ''Washington, DC Metropolitan Area Special Flight Rules Area'' (70 FR 45250; Aug. 4, 2005). The comment period closed November 2, 2005; however, in response to public request, the comment period was reopened until

February 6, 2006. In addition, the FAA also announced its intention to hold public meetings. See the **Federal Register** of November 7, 2005 (70 FR 67388; Nov. 7, 2005).

Purpose of the Public Meetings

The purpose of the public meetings is for the FAA to hear the public's views and obtain information relevant to the final rule under consideration. The FAA will consider comments made at the public meetings before making a final decision on issuance of the final rule.

In the economic analysis to the August 4, 2005 NPRM, the FAA requested information from the public. If you have not already submitted data to the FAA on these areas, you may do so at the public meetings. The FAA requests that all comments be accompanied by full documentation.

In addition to the information sought in the NPRM, the FAA seeks information on the following questions. Again, the FAA requests that all comments be accompanied by full documentation.

- What has been the effect of the airspace restrictions on aircraft owners that relocated outside the Washington, DC Air Defense Identification Zone (ADIZ)? What has been the loss of income for those aircraft owners?
- What has been the loss in time and revenue of pilots flying longer routes to avoid the DC ADIZ or curtailing their flying because of the DC ADIZ?
- What is the percentage of reduction in overall flying because of the existence of the DC ADIZ?

Participation at the Public Meetings

If you wish to present an oral statement at the January 12, 2006 public meetings, you should submit your request to the FAA no later than January 5, 2006.

If you wish to present an oral statement at the January 18, 2006 public meetings, you should submit your request to the FAA no later than January 11, 2006.

Your requests should be submitted as described under **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. Requests received after the dates specified above will be scheduled if there is time available during the meetings; however, the speakers' names may not appear on the written agendas. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. See ''Public Meeting Procedures'' below.

The FAA will have available a projector and a computer capable of accommodating Word and PowerPoint presentations from a compact disk (CD) or USB memory device. Persons requiring any other kind of audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Public Meeting Procedures

A panel of representatives from the FAA and other government agencies will be present. An FAA representative will facilitate the meetings in accordance with the following procedures:

(1) The meetings are designed to facilitate the public comment process. The meetings will be informal and non-adversarial. No individual will be subject to cross-examination by any other participant. Government representatives on the panel may ask questions to clarify statements and to ensure an accurate record. Any statement made during the meetings by a panel member should not be construed as an official position of the government.

(2) There will be no admission fees or other charges to attend or to participate in the public meetings. The meetings will be open to all persons, subject to availability of space in the meeting room. The FAA will make every effort to accommodate all persons wishing to attend. The FAA asks that you sign in between 12–1 pm., or 5:30–6:30 p.m., on the day of the meeting you are attending. The FAA will try to accommodate all speakers; however if available time does not allow this, speakers will be scheduled on a first-come-first-served basis. The FAA reserves the right to exclude some speakers, if necessary, to obtain balanced viewpoints. The meetings may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meetings.

(3) The FAA will prepare agendas of speakers and presenters and make the agendas available at the meetings.

(4) Speakers may be limited to 5–10-minute statements. If possible, the FAA will notify speakers if additional time is available.

(5) The meetings will be recorded by a court reporter. A transcript of the meetings and all material accepted by the panel during the meetings will be included in the public docket, unless protected from disclosure. Each person interested in purchasing a copy of a transcript should contact the court reporter directly. Information on how to purchase a transcript will be available at the meetings.

(6) The FAA will review and consider all material presented by participants at the public meetings. Position papers or materials presenting views or information related to the draft final rule may be accepted at the discretion of the presiding officer and will be subsequently placed in the public docket. The FAA requests that presenters at the meetings provide at least 10 copies of all materials for distribution to the panel members. Presenters may provide other copies to the audience at their discretion.

(7) Each person presenting comments is asked to submit data to support the comments. The FAA will protect from disclosure all proprietary data submitted in accordance with applicable laws.

Issued in Washington, DC, on December 7, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–23982 Filed 12–8–05; 12:57 pm]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[R06–OAR–2005–OK–0003; FRL–8006–8]

Approval of the Clean Air Section 112(l) Program for Hazardous Air Pollutants and Delegation of Authority to the Oklahoma Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NESHAPs promulgated by EPA, as amended through September 1, 2004. The delegation of authority under this action does not apply to sources in Indian Country. EPA is providing notice proposing to approve the delegation of certain NESHAPs to ODEQ.

DATES: Written comments must be received by January 12, 2006.

ADDRESSES: Comments may be mailed to Mr. Jeff Robinson, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the final rules section of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Robinson, Air Permits Section, Multimedia Planning and Permitting Division (6PD–R), U.S. Environmental Protection Agency, Region, 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, at (214) 665–6435, or at *robinson.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register,** EPA is approving ODEQ's request for delegation of authority to implement and enforce certain NESHAPs for all sources (both Part 70 and non-Part 70 sources). The ODEQ has adopted certain NESHAPs into Oklahoma's state regulations. In addition, EPA is waiving its notification requirements so sources will only need to send notifications and reports to ODEQA.

The EPA is taking direct final action without prior proposal because EPA views this is a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be served from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is published in the Rules section of this **Federal Register.**

Authority: 42 U.S.C. 7412.

Dated: November 27, 2005.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

[FR Doc. 05–23969 Filed 12–12–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL–8007–7]

Correction to the Fall 2005 Regulatory Agenda

AGENCY: Environmental Protection Agency.

ACTION: Correction.

SUMMARY: On October 31, 2005, the Regulatory Plan and the Unified Agenda of the Federal Regulatory and Deregulatory Actions for the Environmental Protection Agency was published in the **Federal Register** (70 FR 65206). The regulatory agenda entry for sequence number 3378, ''Oil and Gas Phase II Storm Water Permit Requirements,'' contains erroneous information. This notice corrects the information that was published in the **Federal Register** (70 FR at 65345) under the headings of Legal Authority, CFR Citation, Abstract, and Timetable.

FOR FURTHER INFORMATION CONTACT: Jeff Smith, Office of Wastewater Management, Office of Water, Environmental Protection Agency (4203M) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0652; fax number: (202) 564–6431; e-mail address: *smith.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda to update the public about:

Regulations and major policies currently under development,

Reviews of existing regulations and major policies, and

Rules and major policymakings completed or canceled since the last Agenda.

The regulatory agenda entry in the proposed rule section for sequence number 3378, ''Oil and Gas Phase II Storm Water Permit Requirements'' (70 FR 65345) contains erroneous information. The Agency did not intend to express an interpretation of the Energy Policy Act of 2005 in advance of the EPA publishing the proposed rule. This notice corrects the information that was provided under the headings of Legal Authority, CFR Citation, Abstract, and Timetable for the Oil and Gas Phase II Storm Water Permit Requirements action. The following agenda item replaces in its entirety the agenda item that was provided in the EPA's Semiannual Regulatory Agenda for sequence number 3378, Oil and Gas Phase II Storm Water Permit Requirements:

Priority: Substantive, Significant.

Legal Authority: CWA 402(p).

CFR Citation: 40 CFR 122.26.

Legal Deadline: None.

Abstract: On Monday, August 8, President Bush signed into law The Energy Policy Act of 2005. Section 323 of this legislation modifies section 502 of the Federal Water Pollution Control Act to define the term ''oil and gas exploration, production, processing, or treatment operations, or transmission facilities'' to mean ''all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.'' In order to accommodate the changes in the new law, EPA expects to propose modifications to its current regulations governing construction site storm water discharges for oil and gas activities regulated by the Phase I and Phase II storm water rules.

TIMETABLE

Action	Date	FR cite
NPRM	12/00/05	
Final Action	06/00/06	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: Federal, State.

Additional Information: SAN No. 4979.

Agency Contact:

Jeff Smith, Environmental Protection Agency, Water, 4203M, Washington, DC 20460. Phone: 202–564–0652. Fax: 202–564–6431. E-mail: *smith.jeff@epa.gov.*

Deborah Nagle, Environmental Protection Agency, Water, 4203M, Washington, DC 20460. Phone: 202–564–1185. Fax: 202–564–6431. E-mail: *nagle.deborah@epa.gov.*

Dated: December 7, 2005.

Louise P. Wise,

Deputy Associate Administrator, Office of Policy, Economics, and Innovation.

[FR Doc. E5–7274 Filed 12–12–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7454]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Federal Emergency Management Agency certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
Arizona	Pinal County (Unincorporated Areas):.	McClellan Wash	Approximately 0.61 mile west of Battagila Drive.	None	+1,566
			Approximately 6.8 miles upstream of confluence with McClellan Wash Split.	None	+1,824
	Eloy, City of	Santa Cruz Wash	Approximately 0.72 mile west of Ethington Road.	None	+1,382
			Approximately 1,000 feet south of Shedd Road.	None	+1,440
	Eloy, City of	Santa Rosa Canal	Approximately 400 feet west of Henness Road.	None	+1,481
			Approximately 222 feet east of Toltec Highway.	None	+1,528
	Casa Grande, City of.	North Branch Santa Cruz Wash.	Approximately 0.86 mile west of Wash Thornton Road.	None	+1,363
			Approximately 1.85 miles east of Peart Road.	None	+1,409
	Casa Grande, City of.	Arizola Drain	Approximately 0.64 mile west of Cox Road.	None	+1,407
			Approximately 5.02 miles above confluence with North Branch Santa Cruz Wash.	None	+1,453

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified

+North American Vertical Datum 1988

ADDRESSES:

Pinal County (Unincorporated Areas):
Maps are available for inspection at: 140 N. Florence Street, Florence, AZ 85232.
Send comments to: The Honorable Sandie Smith, Pinal County, Chairperson of the Board of Supervisors, P.O. Box 827, Florence, AZ 85232.

City of Casa Grande:

Maps are available for inspection at: The City Hall, 510 E. Florence Blvd., Casa Grande, AZ 85222.
Send comments to: The Honorable Chuck Walton, 510 E. Florence Blvd., Casa Grande, AZ 85222.

City of Eloy:

Maps are available for inspection at: City Hall, 628 N. Main St., Eloy, AZ 85231 or the City Library, 100 E. 7th St., Eloy, AZ 85231.
Send comments to: The Honorable Byron Jackson, 628 North Main St. Eloy, AZ 85231.

Colorado	Town of Silt, Garfield County.	Colorado River	Approximately 1100 feet upstream I–70 ..	None	*5,404
			Just downstream of County Road 311	None	*5,428

*National Geodetic Vertical Datum 1929

ADDRESSES:

Town of Silt:

Maps are available for inspection at the Town Hall, 231 North 7th Street, Silt, CO 81652.
Send comments to The Honorable John Evan, Mayor, Town of Silt, and P.O. Box 70, Silt, CO 81652.

Kentucky	Bell County (Uninc. Areas) City of Pineville.	Cumberland River	Approximately 6,185 feet downstream of the confluence of Greasy Creek.	*1,011	+1,009
			Approximately 770 feet upstream of the confluence of Burst Branch.	*1,102	+1,099
	Bell County (Uninc. Areas).	Hances Creek	At the confluence with Cumberland River	*1,043	+1,021
			Approximately 5,630 feet upstream of the confluence with Cumberland River.	*1,043	+1,021
	Bell County (Uninc. Areas).	Left Fork Straight Creek	At the confluence with Straight Creek	*1,021	+1,020
			Approximately 1,915 feet upstream of the confluence of Sims Fork.	*1,076	+1,075
	City of Middlesboro	Little Yellow Creek	At the confluence with Yellow Creek	*1,132	+1,131
			Approximately 275 feet upstream of the confluence of Davis Branch.	None	+1,141
	Bell County (Uninc. Areas) City of Pineville.	Straight Creek	At the confluence with Cumberland River	*1,022	+1,020
			Approximately 3,725 feet upstream of the confluence of Cox Branch.	None	+1,161
	Bell County (Uninc. Areas) City of Middlesboro.	Yellow Creek	At confluence with Cumberland River	*1,038	+1,034
			Approximately 375 feet southwest of the intersection of Cumberland Avenue and 34th Street.	*1,137	+1,141

*National Geodetic Vertical Datum 1929
+North American Vertical Datum 1988

ADDRESSES:

Bell County (Unincorporated Areas): Maps are available for inspection at Community Map Repository, 1 Courthouse Square, Pineville, Kentucky 40977.
Send comments to Honorable William Kelley, County Judge-Executive, P.O. Box 339 Pineville, Kentucky 40977.

City of Middlesboro:

Maps are available for inspection at Community Map Repository, 21 & Loft Avenue, Middlesboro, Kentucky 40965.
Send comments to Honorable Hickman, Mayor, City of Middlesboro, Post Office Box 756, Middlesboro, Kentucky 40965.

City of Pineville:

Maps are available for inspection at Community Map Repository, 300 Virginia Avenue, Pineville, Kentucky 40977.
Send comments to Honorable Bruce Hendrickson, Mayor, City of Pineville, P.O. Box 688, Pineville, Kentucky 40977.

Kentucky	Knox County (Uninc. Areas).	Cumberland River	Approximately 6,410 feet southwest of the intersection of Goodin Creek Road and Kentucky State Highway 11.	None	+966
			Approximately 4,495 feet upstream of the confluence of Elys Branch.	None	+1,014

+North American Vertical Datum 1988

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified

ADDRESSES:

Knox County (Unincorporated Areas):

Maps are available for inspection at Community Map Repository, County Courthouse, 104 Court Square, Barbourville, KY 40906.
Send comments to Honorable Raymond Smith, County Judge-Executive, P.O. Box 173, Barbourville, Kentucky 40906.

City of Barbourville:

Maps are available for inspection at Community Map Repository, County Courthouse, 104 Court Square, Barbourville, KY 40906.
Send comments to Honorable W. Patrick Hauser, Mayor, City of Barbourville, 196 Daniel Boone Drive, Barbourville, KY 40906.

Kentucky	Louisville Metro	Anita Branch	At confluence with Pennsylvania Run	None	+535
			Approximately 240 feet upstream of Cedar Creek Road.	None	+614
	Louisville Metro	Blue Springs Ditch	At confluence with Northern Ditch	*462	+460
			Approximately 650 feet downstream of Fern Valley Road.	*464	+462
			Just upstream of Fern Valley Road	*464	+463
			Approximately 80 feet downstream of Hanses Drive.	*466	+465
			Approximately 330 feet downstream of Jefferson Boulevard.	*471	+467
			Approximately 1,570 feet upstream of Jefferson Boulevard.	*473	+470
	Louisville Metro	Brownsboro Ditch	At confluence with Little Goose Creek	None	+583
			Approximately 70 feet upstream of Ten Broeck Way.	None	+583
	Louisville Metro	Brush Run Upper	At confluence with Floydes Fork	None	+597
			Approximately 530 feet upstream of Polo Fields Lane.	None	+655
	City of Shively	City Park Ditch	At confluence with Upper Mill Creek	*452	+448
			Approximately 300 feet upstream of Olenda Way.	*452	+448
	Louisville Metro	Drews Fork	At confluence with Lovvorn Creek	None	+600
			Approximately 280 feet upstream of Cooper Chapel Road.	None	+629
	Louisville Metro	Durbin Branch	At confluence with Lovvorn Creek	None	+595
			Approximately 120 feet upstream of Cooper Chapel Road.	None	+633
	Louisville Metro	Fishpool Creek	At confluence with Southern Ditch	*464	+462
			Approximately 1,570 feet upstream of Blue Lick Road.	*469	+467
			Approximately 950 feet downstream of South Park Road.	*476	+472
			Approximately 1,320 feet upstream of Charleswood Road.	*573	+571
			Approximately 20 feet upstream of Cooper Chapel Road.	None	+582
			Approximately 2,000 feet upstream of Cooper Chapel Road.	None	+594
	Louisville Metro	Floyds Fork	Approximately 29,700 feet Metro downstream of Bardstown Road.	*477	+475
			Approximately 1,600 feet upstream of Broad Run Road.	*497	+496
			Approximately 7,910 feet downstream of confluence with Cane Run.	*520	+521
			Approximately 3,400 feet upstream of confluence with Cane Run.	*537	+534
			Approximately 4,970 feet downstream of Taylorsville Lake Road.	*549	+548
			Approximately 1,930 feet downstream of Taylorsville Lake Road.	*550	+552
			Approximately 1,740 feet downstream of Taylorsville Road.	*559	+559
			Approximately 3,570 feet upstream of Taylorsville Road.	*567	+568
			Approximately 3,100 feet downstream of I–64 East.	*583	+581
			Approximately 330 feet downstream of Shelbyville Road.	*596	+596
			Approximately 7,700 feet upstream of CSX Railroad.	*614	+612
			Approximately 12,300 feet upstream of Aiken Road.	*629	+628

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
	Louisville Metro	Gene Snyder Tributary	At confluence with Pennsylvania Run	None	+595
			Approximately 500 feet upstream of I–265 North.	None	+608
	Louisville Metro	Goose Creek	Just upstream of Lakeland Road	None	+661
			Approximately 220 feet downstream of Cave Spring Place.	None	+707
	Louisville Metro	Harrods Creek	At confluence with Ohio River	None	+452
			Approximately 22,400 feet upstream of Brownsboro Road.	None	+452
	City of Shively	Heatherfield Ditch	At confluence with Upper Mill Creek	*448	+447
			Just downstream of Heatherfield Drive	*448	+447
	Louisville Metro	Hite Creek	Approximately 2,850 feet downstream of Worthington Lane.	None	+599
			Approximately 820 feet upstream of Collins Lane.	None	+734
	Louisville Metro	LeFores Branch	At confluence with Goose Creek	None	+668
			Approximately 1,140 feet upstream of confluence with Goose Creek.	None	+677
	Louisville Metro	Lilac Run	At confluence with Little Goose Creek	None	+628
			Approximately 1,780 feet upstream of Wynbrooke Cirle.	None	+667
	Louisville Metro	Little Goose Creek	Approximately 580 feet downstream of I–71 South.	None	+548
			Approximately 300 feet upstream of Westport Road.	None	+651
	Louisville Metro	Long Run Creek	At confluence with Floyds Fork	None	+569
			Approximately 830 feet upstream of Long Run Road.	None	+653
	Louisville Metro	Lovvorn Creek	At confluence with Pennsylvania Run	None	+578
			Approximately 170 feet upstream of Beulah Church Road.	None	+652
	Louisville Metro	Northern Ditch	At confluence with Pond Creek	*457	+455
			Approximately 1,910 feet downstream of Preston Highway.	*461	+459
			Approximately 1,840 feet upstream of Preston Highway.	*464	+463
			Approximately of 410 feet upstream of Shepherdsville Road.	*479	+480
	Louisville Metro	Pennsylvania Run	Approximately 900 feet downstream of Mt. Washington Road.	None	+528
			Approximately 920 feet upstream of Outer Loop.	None	+648
	Louisville Metro	Pohlmann Branch	At confluence with Pennsylvania Run	None	+602
			Approximately 160 feet upstream of Beulah Church Road.	None	+657
	Louisville Metro	Pond Creek	Approximately 6,500 feet downstream of Stites Station Road.	*431	+430
			Approximately 870 feet upstream of Blenvins Gap Road.	*432	+433
			Approximately 1,000 feet downstream of Stonestreet Road.	*448	+445
			Approximately 1,800 feet upstream of New Cut Road.	*457	+455
	Louisville Metro	Rolling Hills Branch	At confluence with Little Goose Creek	None	+590
			Approximately 180 feet upstream of Goose Creek Road.	None	+608
	Louisville Metro, City of West Buechel, City of Jeffersontown.	South Fork Beargrass Creek.	At pump Station	*434	+433
			Approximately 50 feet upstream of Baxter Avenue.	*450	+449
			Approximately 170 feet upstream of Ellison Avenue.	*455	+456
			Approximately 6,100 feet upstream of Eastern Parkway.	*461	+460
			Approximately 360 feet upstream of Goldsmith Lane (1st crossing).	*472	+470
			Approximately 760 feet downstream of Bashford Manor Lane.	*474	+472

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 240 feet upstream of Bashford Manor Lane.	*474	+472
			Approximately 100 feet downstream of Bardstown Road.	*476	+475
			Approximately 80 feet upstream of Bardstown Road.	*479	+478
			Approximately 40 feet downstream of Hikes Lane.	*492	+491
			Approximately 260 feet upstream of Breckenridge Lane.	*510	+511
			Approximately 3,270 feet upstream of Hunsinger Lane.	*534	+533
			Approximately at Brybed Reservoir	None	+564
			Approximately 1,500 feet downstream of Stony Brook Drive.	None	+564
			Just downstream Taylorville Road	None	+634
	Louisville Metro	Southern Ditch	At confluence with Pond Creek	*457	+455
			Approximately 960 feet downstream of Minors Lane.	*460	+459
			Approximately 1,620 feet downstream of Outer Loop (1st crossing).	*475	+472
			Approximately 490 feet downstream of Gayeway Drive.	*505	+506
			Approximately 310 feet upstream of Gayeway Drive.	*518	+517
			Approximately 30 feet upstream of Shepherdsville Road.	*530	+531
			Approximately 60 feet downstream of Michael Ray Drive.	*564	+561
			Approximately 790 feet upstream of Michael Ray Drive.	*577	+576
			Approximately 1,350 feet upstream of Michael Ray Drive.	*584	+586
	Louisville Metro	Springhurst Creek	At confluence with Little Goose Creek	None	+588
			Approximately 350 feet upstream of Ten Broeck Way.	None	+591
	Louisville Metro, City of Matthews.	Weicher Creek	At confluence with Middle Fork Beargrass Creek.	*509	+508
			Approximately 100 feet downstream of I–264 West Ramp	*516	+517
			Approximately 20 feet upstream of Blossomwood Drive.	*521	+522
			Approximately 600 feet upstream of Woodmont Drive.	*539	+537
			Approximately 190 feet upstream of Dannywood Road.	*549	+545
			Approximately 290 feet upstream of Lincoln Road.	*553	+550
			Approximately 820 feet upstream of Lincoln Road.	None	+555
			Approximately 3,870 feet upstream of Limehouse Lane.	None	+647
	Louisville Metro	Wet Woods Creek	At confluence with Southern Ditch	*459	+457
			Just downstream of Preston Highway	*462	+461
	Louisville Metro	Wilson Creek	At confluence with Southern Ditch	*457	+456
			Approximately 990 feet upstream of I–265 North	*462	+460
			Approximately 3,290 feet upstream of National Turnpike.	*468	+467
			Approximately 2,260 feet upstream of Farmers Lane.	*476	+477
			Approximately 3,550 feet upstream of Farmers Lane.	None	+480
			Approximately 4,700 feet downstream of National Turnpike.	None	+524

*National Geodetic Vertical Datum 1929

+North American Vertical Datum 1988

ADDRESSES:

Louisville Metro:

Maps are available for inspection at Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, Kentucky 40203–1911.

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified

Send comments to Mr. Randy Stambaugh, P.E., CFM, Floodplain Administrator, Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, Kentucky 40203–1911.

City of Jeffersontown:

Maps are available for inspection at Jeffersontown City Hall, 10416 Watterson Trail, Jeffersontown, Kentucky 40299.
Send comments to Honorable Clay Foreman, Mayor, Jeffersontown City Hall, 10416 Watterson Trail, Jeffersontown, Kentucky 40299.

City of Shively:

Maps are available for inspection at Shively City Hall, 3920 Dixie Highway, Louisville, Kentucky 40216–4120.
Send comments to Honorable Sherry Conner, Mayor, Shively City Hall, 3920 Dixie Highway, Louisville, Kentucky 40216–4120.

City of Matthews:

Maps are available for inspection at St. Matthews City Hall, 3940 Grandview Avenue, Louisville, Kentucky 40207.
Send comments to Honorable Arthur Draut, Mayor, St. Matthews City Hall, 3940 Grandview Avenue, Louisville, Kentucky 40207.

City of West Buechel:

Maps are available for inspection at West Buechel City Hall, 3705 Bashford Avenue, Louisville, Kentucky 40218.
Send comments to Honorable Sharon Fowler, Mayor, West Buechel City Hall, 3705 Bashford Avenue, Louisville, Kentucky 40218.

Kentucky	Whitley County (Uninc. Areas), City of Williamsburg.	Cumberland River	Just downstream of State Route 204	*907	+906
			Approximately 4,570 feet upstream from Goodin Creek.	None	+966

*National Geodetic Vertical Datum 1929

+North American Vertical Datum 1988

ADDRESSES:

Unincorporated Areas of Whitley County:

Maps are available for inspection at Community Map Repository, Whitley County Courthouse, 310 Main Street, Williamsburg, Kentucky 40769.
Send comments to The Honorable Michael Patrick, County Judge-Executive, Whitley County Courthouse, 310 Main Street, Williamsburg, Kentucky 40769.

City of Williamsburg:

Maps are available for inspection at Community Map Repository, Williamsburg City Hall, office of Mayor, 116 North Second Street, Williamsburg, Kentucky 40769.
Send comments to The Honorable Joseph Early, Mayor, City of Williamsburg, P.O. Box 907, Williamsburg, Kentucky 40769.

Maine +North American Vertical Datum 1988 **ADDRESSES:** **Town of Eagle Lake:** Maps are available for inspection at 36 Devoe Brook Road, Eagle Lake, Maine 04739. Send comments to The Honorable James Nadeau, Town Manager, Town of Eagle Lake, 36 Devoe Brook Road, P.O. Box 287, Eagle Lake, Maine 04739.	Town of Eagle Lake, Aroostook County.	Eagle Lake	Entire Shoreline at Eagle Lake Within the corporate limits.	None	+581
Montana	Lincoln County	Big Cherry Creek	At the confluence with Libby Creek	*2,144	*2,152
			Approximately 3,600 feet upstream of Granite Creek Road.	None	*2,358
		Libby Creek	Just upstream of railroad crossing prior to confluence with Kootenai River.	*2,060	*2,065
			Approximately 3,500 feet upstream of U.S. Route 2.	None	*2,773

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified

*National Geodetic Vertical Datum 1929.

ADDRESSES:

Unincorporated Areas of Lincoln County:

Maps are available for inspection at the County Courthouse, 512 California Avenue, Libby, Montana 59923.
Send comments to The Honorable John Konzen, Chairman, Lincoln County, 512 California Avenue, Libby, MT 59923.

New Hampshire	Town of Milan, Coos County.	Androscoggin River	Approximately 7,800 feet of Halt Road extended.	None	+1,109
			Approximately 1,500 feet upstream of Owens Road extended.	None	+1,114

+North American Vertical Datum 1988

ADDRESSES:

Town of Milan:

Maps are available for inspection at the Town Hall, 20 Bridge Street, Milan, NH 03588.
Send comments to: The Honorable Richard Lamontagne, Chairman, Town of Milan, P.O. Box 300, Milan, NH 03588.

New Hampshire	Town of Wakefield, Carroll County.	Belleau Lake	At Moose Road	*579	+584
			Entire Shoreline of Belleau Lake above Woodman Lake.	*579	+584

*National Geodetic Vertical Datum 1929

+North American Vertical Datum 1988

ADDRESSES:

Town of Wakefield:

Maps are available for inspection at the Map Repository, Town of Wakefield, Assessor's Office, 2 High Street, Sanbornville, New Hampshire 03872.
Send comments to: Mr. Robin Frost, Town Administrator, Town of Wakefield, Town Office, 2 High Street, Sanbornville, New Hampshire 03872.

Pennsylvania	Township of Granville, Township of Oliver, Mifflin County (Uninc. Areas).	Strodes Run	Approximately at the confluence with Juniata River.	None	+490
			Approximately 55 feet upstream of Ferguson Valley Road.	None	+621

+North American Vertical Datum 1988

ADDRESSES:

Township of Granville

Maps are available for inspection at the Granville Municipal Offices, 100 Helen Street Lewistown, PA 17044.
Send comments for Granville Township to The Honorable Charles Watts, III Chairman, Granville Township Supervisors 100 Helen Street, Lewistown, Pennsylvania 17044.

Township of Oliver

Maps are available for inspection at Municipal Offices, 274 Lockport Road, Lewistown, PA 17044.
Send comments for Oliver Township to The Honorable Robert D. Smith Chairman, Oliver Township Supervisors 274 Lockport Road Lewistown, Pennsylvania 17044.

South Carolina	Sumter County	Beech Creek	Approximately 1.1 miles upstream of Barnwell Drive.	*181	*180
			Approximately 100 feet downstream of Edgehill Road.	None	*225
		Beech Creek	At the confluence with Beech Creek	*168	*168
		Tributary 1	Approximately 150 feet downstream of Raccoon Road.	None	*193
		Brunson Branch	At the confluence with Mulberry Branch ..	None	*133
			Approximately 700 feet upstream of Oswego Highway.	None	*144
		Brunson Branch	At the confluence with Brunson Branch ...	None	*134
		Tributary 1	Approximately 0.6 mile upstream of the confluence of Cut Through 1.	None	*143
		Cane Savannah Creek	Approximately 200 feet downstream of Kolb Road.	*138	*138
			Approximately 250 feet upstream of Wedgefield Highway.	None	*164
		Cut Through 1	At the confluence with Brunson Branch Tributary 1.	None	*140
			Just downstream of Jerry Street	None	*144
		Cut Through 2	At the confluence with Mulberry Branch ..	None	*134
			Just downstream of Jerry Street	None	*144

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
		Green Swamp	Approximately 250 feet downstream of Mason Road.	*169	*169
			Approximately 50 feet downstream of Brewington Road.	None	*189
		Hatchet Camp Beach	At confluence with Cane Savannah Creek	None	*160
			Approximately 1.1 miles upstream of Bronco Road.	None	*256
		Hope Swamp	At the confluence with Pudding Swamp	None	*108
			Approximately 100 feet downstream of Narrow Paved Road.	None	*116
		Horsepen Branch	At the confluence with Green Swamp	None	*181
			Approximately 250 feet downstream of Stamey Livestock Road.	None	*203
		Long Branch	Approximately 330 feet downstream of Broad Street.	*173	*173
			Approximately 350 feet downstream of Frierson Road.	None	*223
		Lynches River	Approximately 7.7 miles downstream of Amwell Church Road.	None	*99
			Approximately 1000 feet downstream of Interstate 95.	None	*120
		Mile Branch	At the confluence with Brunson Branch	None	*140
			Approximately 0.2 mile downstream of U.S. Route 378 and 76.	None	*143
		Mulberry Branch	At the confluence with Rocky Bluff Swamp.	*133	*133
			Approximately 150 feet downstream of Main Street.	None	*167
		Mulberry Branch	At the confluence with Mulberry Branch	None	*134
		Tributary 1	Approximately 1.3 miles upstream of the confluence with Mulberry Branch.	None	*143
		Mush Swamp	Approximately 850 feet downstream of Loring Mill Pond Road.	*162	*162
			Approximately 50 feet upstream of Eagle Road.	None	*204
		Nasty Branch	At the confluence with Cane Savannah Creek.	*131	*128
			Approximately 250 feet downstream of Bethel Church Road.	None	*175
		Noyts Branch	At the confluence of Green Swamp	*129	*129
			Approximately 350 feet upstream of Main Street.	None	*159
		Pocalla Creek	At the confluence with Pocotaligo River	*121	*121
			Approximately 250 feet downstream of South Guignard Drive.	None	*168
		Pudding Swamp	Approximately 300 feet downstream of Forge Road.	None	*103
			Approximately 200 feet downstream of Trinity Road.	None	*125
		Rocky Bluff	Approximately 0.8 mile upstream of the confluence of Mulberry Branch.	*134	*134
			Approximately 900 feet downstream of Westbury Mill Road.	None	*168
		Shot Pouch Branch	At the confluence with Green Swamp	*138	*138
			Approximately 450 feet downstream of Jefferson Road.	None	*176
		Sooks Branch	At the confluence of Green Swamp	*133	*133
			Approximately 75 feet upstream of Council Lane.	None	*157

*National Geodetic Vertical Datum 1929

ADDRESSES:

City of Sumter:

Maps are available for inspection at 33 North Main Street, Sumter, SC, 29150.
Send comments to The Honorable Joseph T. McElveen Jr., Mayor, City of Sumter, P.O. Box 1449, Sumter, SC 29151.

Unincorporated Areas of Sumter County:

Maps are available for inspection at 33 North Main Street, Sumter, SC 29150.
Send comments to Mr. William T. Noonan, Sumter County Administrator, 13 East Canal Street, Sumter, SC 29150.

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
South Dakota	City of Parkston, Hutchinson County.	Pony Creek	Approximately 1,100 feet downstream of Glynn Drive.	None	*1,378
			Approximately 200 feet upstream of Highway 37.	None	*1,407

*National Geodetic Vertical Datum 1929

ADDRESSES:

City of Parkston:

Maps are available for inspection at the Office of the Chief Executive Officer, 207 West Main Street, Parkston, South Dakota 57366.
Send comments to the Honorable David J. Hoffman, Mayor, City of Parkston, 207 West Main Street, Parkston, South Dakota 57366.

Utah	City of Eureka, Juab County.	Eureka, Gulch	Approximately 0.52 mile downstream of Church Street.	None	+6,303
			Approximately 550 feet upstream of Bulk Plant Road.	None	+6,571

+National American Vertical Datum 1988

ADDRESSES:

City of Eureka:

Maps are available for inspection at the office of the Chief Executive Officer at City Hall, 15 North Church Street, Eureka, UT 84628.
Send comments to the Honorable Lloyd Conder, Mayor, City of Eureka, P.O. Box 156, Eureka, Utah 84626.

West Virginia	Ohio County (Uninc. Areas).	Little Wheeling Creek	Approximately 475 feet upstream of Middle Wheeling Creek Road.	None	*718
			Approximately 158 feet upstream of U.S. Route 40.	None	*782

*National Geodetic Vertical Datum 1929

ADDRESSES:

Unincorporated areas of Ohio County:

Maps are available for inspection at the City County Building, 1500 Chapline Street, Room 215, Wheeling, WV 26003.
Send comments to Mr. Greg Stewart County Administrator, 1500 Chapline Street, Room 215, Wheeling, WV 26003.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Larimer County, Colorado and Incorporated Areas				
Big Thompson River:	Approximately 150 feet upstream of Boyd Lake Outlet Ditch.	None	+4,880	Larimer County (Uninc. Areas), City of Loveland.
	Approximately 300 feet west of Lincoln Avenue and approximately 1,700 feet west of St. Louis Avenue.	None	#2	
	Just downstream of St. Louis Avenue	+4,920	+4,923	
	Just upstream of St. Louis Avenue	+4,921	+4,924	
	Just east of Taft Avenue to 900 feet west of Taft Avenue Garfield Avenue.	None	#1	
	South of Dry Creek and north of Rossum Drive	None	#3	
	Approximately 1,400 feet upstream of confluence of Dry Creek.	None	+5,046	
Dry Creek:	Just upstream of confluence with Big Thompson River	None	+5,043	City of Loveland
	Approximately 0.4 miles upstream of confluence with Big Thompson River.	None	+5,065	
Big Thompson River—South Spill:	At confluence with Big River	None	+4,938	Larimer County (Uninc. Areas) and City of Loveland.
	Just upstream of Taft Avenue	None	+4,970	
Big Thompson River—Grave Pit Split:	At confluence with Big Thompson River Approximately 1,900 feet upstream of confluence with Big Thompson River.	None	+4,888	Larimer County (Uninc. Areas)
	.....	None	+4,899	
Big ThompsonRiver:	Approximately 800 feet upstream of Larimer-Weld County Line.	None	+4,812	Larimer County (Uninc. Areas) and Town Johnstown
	Approximately 800 feet of upstream of County Road 3	None	+4,829	
	Just upstream of I–25	None	+4,852	

+North American Vertical Datum

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

#Depth in feet above ground

ADDRESSES:

Unincorporated Areas Larimer County:

Maps are available for inspection at the Larimer County Courthouse, 200 West Oak Street, Fort Collins, Colorado 80521.

Send comments to the Honorable Kathay Rennels, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.

City of Loveland:

Maps are available for inspection at City Hall, 500 East Third Street, Loveland, Colorado 80537.

Send comments to the Honorable Larry Walsh, Mayor, City of Loveland, 500 East Third Street, Loveland, Colorado 80537.

Town of Johnstown:

Maps are available for inspection at the Town Hall, 101 Charlotte Street, Johnstown, Colorado 80534.

Send comments to the Honorable Troy D. Mellon, Mayor, Town of Johnstown, 101 Charlotte Street, Johnstown, Colorado 80534.

Henry County, Georgia and Incorporated Areas				
Little Cotton Indian Creek	At the confluence with Big Cotton Indian Creek.	+654	+655	Henry County (Uninc. Areas).
	Approximately 1,000 feet upstream of the confluence with Big Cotton Indian Creek.	+654	+655	

+North American Vertical Datum 1988.

ADDRESSES:

Henry County, Georgia (Unincorporated Areas):

Maps are available for inspection at the Community Map Repository, 140 Henry Parkway, McDonough, Georgia, 30253.

Send comments to Mr. Rob Magnaghi, Henry County Manager, 140 Henry Parkway, McDonough, Georgia 30253.

Peoria County, Illinois and Incorporated Areas				
Fargo Run	At the confluence with Kickapoo Creek	None	+551	Peoria County (Uninc. Areas).
	At the confluence with Illinois State Highway	None	+712	City of Peoria.
Unnamed Tributary 'A' of Fargo Run.	At confluence with Fargo Run	None	+617	Peoria County (Uninc. Areas).
	West branch: Just upstream of U.S. Highway 150	None	+663	
	East branch: Just downstream of Blackbridge Road ...	None	+640	
Unnamed Tributary 'B' of Fargo Run.	At the confluence with Fargo Run	None	+618	Peoria County (Uninc. Areas).
	Approximately 440 feet upstream of Challacomb Road.	None	+630	

+North American Vertical Datum 1988

ADDRESSES:

Unincorporated areas of Peoria County:

Maps available for inspection at Peoria County Planning and Zoning Offices, Peoria County Courthouse, 324 Main Street, Peoria, Illinois 61602.

Send comments to Mr. Matthew Wahl, Director, Peoria County Planning and Zoning, 324 Main Street, Room 301, Peoria, Illinois 61602.

Village of Bartonville:

Maps are available for inspection at the Bartonville Village Hall, 5912 S. Adams Street, Bartonville, Illinois 61607.

Send comments to Ms. Cindi Stafford, Village Clerk, 5912 S. Adams Street, Bartonville, Illinois 61607.

Village of Bellevue:

Maps are available for inspection at the Bellevue Village Hall, 320 Main Street, Peoria, Illinois 61604.

Send comments to Mr. Ralph Wilson, Village President, 320 Main Street, Peoria, Illinois 61604.

City of Chillicothe:

Maps are available for inspection at Chillicothe City Hall, Attn: Sharon Crabel, City Clerk, 908 N. Second Street, Chillicothe, Illinois 61602.

Send comments to Mr. Ken Coulter, Chillicothe City Engineer, 908 N. Second Street, Chillicothe, Illinois 61602.

City of Elmwood:

Maps are available for inspection at the Elmwood City Hall, 116 W. Main Street, Elmwood, Illinois 61529.

Send comments to Ms. Dotty Nauman, City Clerk, 116 W. Main Street, Elmwood, Illinois 61529.

Village of Glasford:

Maps are available for inspection at the Glasford City Hall, 301 S. Oak Street, Glasford, Illinois 61533.

Send comments to Honorable Jack Rudd, Mayor, 301 S. Oak Street, Glasford, Illinois 61533.

Village of Hanna City:

Maps are available for inspection at the Hanna City Village Hall, 313 N. First Street, Hanna City, Illinois 61536.

Send comments to Honorable Fred Winterroth, Mayor, 313 N. First Street, Hanna City, Illinois 61536.

Village of Kingston Mines:

Maps are available for inspection at Village of Kingston Mines, 209 Washington Street, Kingston Mines, Illinois 61539.

Send comments to Ms. Charlette Hancock, 209 Washington Street, Kingston Mines, Illinois 61539.

Village of Mapleton:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps are available for inspection at Mapleton Village Hall, 8524 W. Main Street, Mapleton, Illinois 61547.
Send comments to Mr. Ken Oedewaldt, Village President, 8524 W. Main Street, Mapleton, Illinois 61547.

Village of Norwood:

Maps are available for inspection at Norwood Village Hall, 1515 N. Norwood Boulevard, Peoria, Illinois 61604.
Send comments to Mr. Jim Yocum, Village President, 1515 N. Norwood Boulevard, Peoria, Illinois 61604.

City of Pekin:

Maps are available for inspection at Pekin City Hall, 111 Capital Street, Pekin, Illinois 61554.
Send comments to Mr. Ron Sieh, Code Enforcement Officer, 111 Capital Street, Pekin, Illinois 61554.

Village of Peoria Heights:

Maps are available for inspection at Peoria Heights Village Hall, 4901 N. Prospect Road, Peoria Heights, Illinois 61616.
Send comments to Mr. Tom Horstmann, Village Administrator, 4901 N. Prospect Road, Peoria Heights, 61616.

City of Peoria:

Maps are available for inspection at the City of Peoria Public Works Department, 419 Fulton Street, Peoria, Illinois 61602.
Send comments to Mr. Ken Andrejasich, Permit Engineer, City of Peoria Public Works Department, 419 Fulton Street #307, Peoria, Illinois 61602.

Village of Princeville:

Maps are available for inspection at the Princeville Village Hall, 206 N. Walnut Avenue, Princeville, Illinois 61559.
Send comments to Mr. Sid Stahl, Village President, 206 N. Walnut Avenue, Princeville, Illinois 61559.

City of West Peoria:

Maps are available for inspection at the West Peoria City Hall, 2506 W. Rohmann Avenue, West Peoria, Illinois 61604.
Send comments to Mr. John Carson, City Administrator, 2506 W. Rohmann Avenue, West Peoria, Illinois 61604.

Dekalb County, Indiana and Incorporated Areas

Cedar Creek	County Road 72	None	+816	DeKalb County (Uninc. Areas), City of Auburn, Town of Waterloo.
	Approximately 1,700 feet upstream of County Road 20.	None	+905	
St. Joe River	Approximately 10,400 feet downstream of County Road 68.	None	+791	Dekalb County (Uninc. Areas).
	Approximately 7,600 feet upstream of County Road 79.	None	+813	Town of St. Joe
Little Cedar Creek	Approximately 1,800 feet downstream of County County Road 327.	None	+818	Dekalb County (Uninc. Areas).
	Approximately 2,000 feet upstream of confluence Harvey Guthrie Ditch.	None	+857	
Black Creek	Approximately 800 feet upstream of confluence with Little Cedar Creek.	None	+830	Dekalb County (Uninc. Areas).
	Approximately 3,600 feet upstream of State Road 3 ...	None	+853	
Fish Creek	Approximately 5,000 feet downstream of County Road 79.	None	+840	Dekalb County (Uninc. Areas).
	Approximately 4,000 feet upstream of County Road 65A.	None	+884	
Peckhart Drain	Approximately at confluence with Diehl Drain	None	+861	Dekalb County (Uninc. Areas).
	Approximately at County Road 40	None	+877	City of Auburn.
Diehl Drain	Approximately at confluence with Cedar County Creek.	None	+847	Dekalb County (Uninc. Areas).
	Approximately 100 feet upstream of County Road 15	None	+878	City of Auburn, City of Garrett.

+North American Vertical Datum 1988

ADDRESSES:

DeKalb County:

Maps available for inspection at DeKalb County Planning Commission, 301 S. Union Street, Auburn, Indiana.
Send comments to Sally Rowe, Zoning Administrator, 301 S. Union Street, Auburn, Indiana, 46706.

Town of Hamilton:

Maps are available for inspection at the Zoning Administrator's Office, 7750 South Wayne Street, Hamilton, Indiana.
Send comments to Keith Smith, Zoning Administrator, 7750 South Wayne Street, Hamilton, Indiana, 46742.

City of Auburn:

Maps available for inspection at the Building, Planning and Development Department 210 Cedar Street, Auburn, Indiana.
Send comments to Bill Spohn, Administrator, Building, Planning and Development, 210 Cedar Street, Auburn, Indiana 46706.

City of Butler:

Maps available for inspection at Butler City Utility Office, 201 South Broadway, Butler, Indiana.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Send comments to Amy Schweitzer, City Planner, 201 South Broadway, Butler, Indiana 46721.

City of Garrett:

Maps available for inspection at Garrett Planning Department, 130 South Randolph Street, Garrett, Indiana.
Send comments to Steve Bingham, Planning Director, City of Garrett, 130 South Randolph Street, Garrett, Indiana 46738.

Town of Corunna:

Maps available for inspection at Corunna Town Hall, 102 N. Bridge Street, Corunna, Indiana.
Send comments to Cassandra Lynch, Clerk Treasurer, 102 N. Bridge Street, Corunna, Indiana 40730.

Town of Waterloo:

Maps available for inspection at Town Hall, 280 N. Wayne Street, Waterloo, Indiana.
Send comments to DeWayne Nodine, 280 N. Wayne Street, Waterloo, Indiana 46793.

Town of St. Joe:

Maps available for inspection at St. Joe Town Hall, 102 Third Street, St. Joe, Indiana.
Send comments to Laura Spuller, Clerk Treasurer, 102 Third Street, St. Joe, Indiana 46785.

Town of Ashley:

Maps available for inspection at Clerk-Treasurer's Office, 500 S. Gonser Avenue, Ashley, Indiana.
Send comments to Don Farrington, Superintendent, 500 S. Gonser Avenue, Ashley, Indiana, 46705.

Town of Altona:

Maps available for inspection at Town Clerk-Treasurer's Office, 1202 W. Quincy Street, Garrett, Indiana.
Send comments to Max Milks, Clerk-Treasurer, 1202 W. Quincy Street, Garrett, Indiana 46738.

Johnson County, Indiana and Incorporated Areas

Brewer Ditch	At confluence with Youngs Creek	None	+749	Johnson County (Uninc Areas), City of Franklin, Town of Whiteland.
	Approximately 1,600 feet downstream of U.S. Highway 31.	None	+782.	
Brewers Ditch	Approximately 1,600 feet downstream of U.S. Highway 31.	*780	+782	Town of Whiteland.
	Approximately at County Road 125	*800	+802	
Canary Ditch	At confluence with Youngs Creek	*742	+744	Johnson County (Uninc Areas) and City of Franklin.
	Approximately 1,300 feet upstream of Earlywood Drive.	*768	+767	
Canary Ditch	Approximately 1,300 feet upstream of Earlywood Drive.	None	+767	Johnson County (Uninc Areas).
	Approximately 1,900 feet upstream of County Road East 400 North.	None	+784	
East Grassy Creek	At confluence with Grassy Creek	None	+781	Johnson County (Uninc Areas).
	Approximately at Whiteland Road	None	+782	
East Grassy Creek	Approximately at Whiteland Road	*784	+785	Johnson County (Uninc Areas), Town of New Whiteland, Town of Whiteland.
	Approximately at Tracy Road	*807	+810	
East Grassy Creek	Approximately at Tracy Road	None	+810	Johnson County (Uninc Areas).
	Approximately 300 feet upstream of County Road East 750 North.	None	+820	
Graham Ditch	At confluence with Canary Ditch	None	+761	Johnson County (Uninc Areas) and City of Franklin.
	Approximately 1,500 feet upstream of Earlywood Drive.	None	+768	
Grassy Creek	Approximately 2,400 feet upstream of County Road West 200 North.	None	+766	Johnson County (Uninc Areas), City of Greenwood, Town of Whiteland, Town of New Whiteland.
	Approximately 750 feet downstream of Granada Drive	None	+809	
Grassy Creek	Approximately 750 feet downstream of Granada Drive	*809	+809	City of Greenwood.
	Approximately 250 feet upstream of Fiesta Drive	*815	+814	
Grassy Creek	Approximately 250 feet upstream of Fiesta Drive	None	+814	City of Greenwood.
	Approximately 300 feet downstream of Interstate 65	None	+821	
Hurricane Creek	At confluence with Youngs Creek	*724	+723	City of Franklin.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	Approximately at Upper Shelbyville Road	*728	+728	
Hurricane Creek	Approximately at Upper Shelbyville Road	None	+728	Johnson County (Unincorporated Areas).
	Approximately at County Road 375 East	None	+811	
Tracy Ditch	At confluence with Grassy Creek	None	+789	Johnson County (Unincorporated Areas) and City of Greenwood.
	Approximately 50 feet upstream of West Stop 18 Road.	None	+794	
Youngs Creek	Approximately 7,500 feet upstream of U.S. Highway 31.	*712	+712	Johnson County (Unincorporated Areas) and City of Franklin.
	Approximately 4,000 feet upstream of South Morton Street.	*727	+729	
Youngs Creek	Approximately 4,000 feet upstream of South Morton Street.	None	+729	Johnson County (Unincorporated Areas) and City of Franklin.
	At confluence with Roberts Ditch	None	+766	

* National Geodetic Vertical Datum 1929
+ North American Vertical Datum 1988

ADDRESSES:

Johnson County:

Maps available for inspection at Johnson County Planning Zoning, 86 West Court Street, Franklin, IN.
Send comments to Mr. Allen D. Kirk, PE, Planning Engineer, 86 West Court Street, Franklin, IN 46131.

Town of Edinburgh:

Maps available for inspection at Town Hall, 107 S. Holland Street, Edinburgh, IN.
Send comments to Mr. Jim Wray, Planning & Zoning, 107 S. Holland Street, Edinburgh, IN 46124.

City of Franklin:

Maps available for inspection at Planning Department, 55 W. Madison Street, Franklin, IN.
Send comments to Mr. David Weir, AICP, Planning Director, 55 W. Madison Street, Franklin, IN 46131.

City of Greenwood:

Maps available for inspection at Planning Department, 225 E. Emerson Avenue, Greenwood, IN.
Send comments to Mr. Ed Ferguson, Planning Director, 225 E. Emerson Avenue, Greenwood, IN 46143.

Town of New Whiteland:

Maps available for inspection at Town Hall, 401 Mooreland Drive, New Whiteland, IN.
Send comments to Mr. Tim Guyer, Zoning Administrator, 401 Mooreland Drive, New Whiteland, IN 46184.

Town of Prince's Lake:

Maps available for inspection at Town Hall, 14 E. Lakeview Drive, Nineveh, IN.
Send comments to Mr. Albert M. Cornell, Building Inspector, 14 E. Lakeview Drive, Nineveh, IN 46164.

Town of Whiteland:

Maps available for inspection at Whiteland Town Hall, 549 Main Street, Whiteland, IN.
Send comments to Mr. Dennis Capozzi, Town Manager, 549 Main Street, Whiteland, IN 46184.

Harlan County, Kentucky and Incorporated Areas

Catron Creek	At the confluence of Catron Creek with Martins Fork	+1,186	+1,188	Harlan County (Unincorporated Areas), City of Harlan.
	Approximately 270 feet upstream of the confluence of Lower Double Branch.	*1,473	+1,472	
Clover Fork	At the confluence of Clover For with Cumberland River.	*1,177	+1,178	Harlan County (Unincorporated Areas).
	Approximately 1,140 feet upstream of the confluence of Breedens Creek.	None	+1,722	City of Evarts, City of Harlan.
Cloverlick Creek	At the confluence of Cloverlick Creek with Poor Fork.	*1,427	+1,427	City of Loyall.
	Approximately 45 feet upstream of the confluence of Gilley Branch.	None	+1,453	Harlan County (Unincorporated Areas), City of Cumberland.
Cumberland River	Apprximately 1,440 feet downstream of the confluence of Jerry's Branch.	*1,100	+1,098	Harlan County (Unincorporated Areas), City of Loyall.
	At the confluence of Clover Fork and Poor Fork	*1,177	+1,178	City of Wallins Creek.
Looney Creek	At the confluence of Looney Creek with Poor Fork	*1,437	+1,437	Harlan County (Unincorporated Areas, City of Benham, City of Cumberland, City of Lynch.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	Approximately 735 feet downstream of the confluence of Long Rock Branch.	*1,886	+1,884	
Martins Fork	At the confluence of Martins Fork with Clover Fork	*1,180	+1,181	Harlan County (Unincorporated Areas), City of Harlan.
	Approximately 2,990 feet upstream of the confluence of Raccoon Branch.	None	+1,264	
Poor Fork	At the confluence of Poor Fork with Cumberland River.	*1,177	+1,178	Harlan County (Unincorporated Areas), City of Cumberland, City of Loyall.
	Approximately 3,670 feet upstream of the confluence of Coldiron Branch.	*1,521	+1,522	City of Cumberland, City of Loyall.
Wallins Creek	At the confluence of Wallins Creek with Cumberland River.	*1,132	+1,133	Harlan County (Unincorporated Areas).
	Approximately 175 feet upstream of the confluence of Brock Branch.	None	+1,154	City of Wallins Creek.
Yocum Creek	At the confluence of Yocum Creek with Clover Fork	*1,297	+1,300	Harlan County (Unincorporated Areas).
	Approximately 575 feet downstream of the confluence of Reds Creek.	None	+1,519	

* National Geodetic Vertical Datum
+ North American Vertical Datum

ADDRESSES:

Unincorporated areas of Harlan County:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Joseph Grieshop, County Judge, Harlan County, Executive 210 East Central Street, Suite 111, Harlan, Kentucky 40831.

City of Benham:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Betty Joe Howard, Mayor, City of Benham, 333 Main Street, Benham, Kentucky 40807.

City of Cumberland:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable William Harrison, Mayor, City of Cumberland, 402 West Main Street, Cumberland, KY 40823.

City of Evarts:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Burl Fee, Mayor, City of Evarts, Post Office Box 303, Evarts, Kentucky 40828.

City of Harlan:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Daniel Howard, Mayor, City of Harlan, Post Office Box 783, Harlan, Kentucky 40828.

City of Loyall:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Charles Wattenberger, Mayor, City of Loyall, Post Office Box 1060, Loyall, Kentucky 40854.

City of Lynch:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Thomas Vincini, Mayor, City of Lynch, 6 East Main Street, Lynch, Kentucky 40855.

City of Willins Creek:

Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
Send comments to The Honorable Freddy Burke, Mayor, City of Wallins Creek, Post Office Box 483, Evarts, Kentucky 40873.

Kent County, Michigan and Incorporated Areas

Behan-Foley Drain	At confluence with Buck Creek	None	+633	City of Grandville and City of Wyoming.
	Approximately 1,100 feet downstream of Barcroft Drive SW.	None	+687	
Bostwick Lake		None	+852	Cannon Township.
Brandywine Creek	At confluence with Indian Mill Creek	None	+655	City of Grand Rapids and City of Walker.
	Approximately 1,100 feet south of Leonard Street	None	+731	
Brandywine Creek Tributary 1.	At confluence with Brandywine Creek	None	+731	City of Walker.
	Approximately 1,200 feet north of Hazelnut Drive	None	+736	
Brandywine Creek Tributary 2.	At confluence with Brandywine Creek	None	+731	City of Walker.
	Approximately 200 feet east of Kusterer Avenue	None	+731	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Buck Creek	Approximately 500 feet downstream of Clyde Park Avenue SW.	*658	+658	Byron Township and City of Wyoming.
	100th Street SW	None	+709	
Buck Lake		None	+770	Caledonia Township.
Campau Lake		*763	+762	Caledonia Township.
Grand River	City of Walker/Plainfield Township	*619	+619	Plainfield Township.
	4 Mile Road (Plainfield Township/Ada Township corporate limits).	*626	+626	
Indian Mill Creek	At confluence with Grand River	None	+616	Alpine Township, City of Grand Rapids, City of Walker.
	Approximately 1,500 feet south of 6 Mile Road	None	+758	
Indian Mill Creek Tributary 1	At confluence with Indian Mill Creek	None	+758	Alpine Township.
	Approximately 900 feet west of Fruit Ridge Avenue	None	+784	
Indian Mill Creek Tributary 2	At confluence with Indian Mill Creek	None	+758	Alpine Township.
	Approximately 800 feet south of 7 Mile Road	None	+801	
Lake Bella Vista		None	+829	Cannon Township.
	At confluence with Grand River	None	+623	Algoma Township, Plainfield Township, Sparta Township, Tyrone Township, City of Rockford, Village of Sparta.
	Approximately 1,400 feet upstream of confluence with Grand River.	None	+606	City of Grandville and City of Wyoming.
Roys Creek	Approximately 700 feet upstream of Prairie	None	+629	
Silver Lake		None	+855	Cannon Township.

*National Geodetic Vertical Datum 1929
+North American Vertical Datum 1988

ADDRESSES:

Kent County:

Maps available for inspection at Kent County Drain Commission, 1500 Scribner Avenue NW., Grand Rapids, MI 49504.
Send comments to Mr. Doug Sporte, Drain Commissioner, Kent County Drain Commission, 1500 Scribner Avenue NW., Grand Rapids, MI 49504.

Ada Township:

Maps available for inspection at Ada Township Office, 7330 Thornapple River Drive, Ada, MI 49301.
Send comments to Mr. James E. Ferro, Planning Director, 7330 Thornapple River Drive, Ada, MI 49301.

Algoma Township:

Maps available for inspection at Attn: Clerk, Algoma Township, 10531 Algoma Avenue, Rockford, MI 49341.
Send comments to Mr. Don Bates, Building Official, 10531 Algoma Avenue, Rockford, MI 49341.

Byron Township:

Maps available for inspection at Attn: Mr. Randy Zomerlei, Byron Township Hall, 8085 Byron Center Avenue SW., Byron Center, MI 49315
Send comments to Mr. Randy Zomerlei, Building Inspector, 8085 Byron Center Avenue SW., Byron Center, MI 49315.

Caledonia Township:

Maps available for inspection to Mr. Ed Rusticus, Caledonia Township Town Hall, 250 Mapel Street, Caledonia, MI 49316.
Send comments to Mr. Ed Rusticus, Zoning Administrator, 250 Mapel Street, Caledonia, MI 49316.

Cannon Township:

Maps available for inspection at Cannon Township Town Hall, 6878 Belding Road NE., Rockford, MI 49341.
Send comments to Mr. Doug Hopkins—IMS Co., 6878 Belding Road NE., Rockford, MI 49341.

Cascade Township:

Maps available for inspection at Cascade Township Planning Department, 2865 Thornhill SE., Grand Rapids, MI 49546.
Send comments to Mr. Steve Peterson, Planning Director, 2865 Thornhill SE., Grand Rapids, MI 49546.

City of Cedar Springs:

Maps available for inspection at City of Cedar Springs, 66 S. Main Street, Cedar Springs, MI 49319.
Send comments to Professional Code Inspectors, 66 S. Main Street, Cedar Springs, MI 49319.

City of East Grand Rapids:

Maps available for inspection at East Grand Rapids City Hall, 750 Lakeside Drive SE., East Grand Rapids, MI 49506.
Send comments to Mr. Ken Feldt, Director, City of East Grand Rapids, 750 Lakeside Drive SE., East Grand Rapids, MI 49506.

City of Grand Rapids:

Maps available for inspection at Bob Borek, Grand Rapids City Engineer's Office, 300 Monroe Avenue NW., Grand Rapids, MI.
Send comments to Mr. Bill Cole, Engineer, City of Grand Rapids, 300 Monroe Avenue NW., Grand Rapids, MI 49503.

City of Grandville:

Maps available for inspection at Attn: Dan Johnson, 3119 Wilson Avenue SW., Grandville, MI 49418.
Send comments to Mr. Dan Johnson, Assistant City Manager, City of Grandville, 3195 Wilson Avenue SW., Grandville, MI 49418.

City of Kentwood:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps available for inspection at City of Kentwood Engineering Department, 4900 Breton Road SE., Kentwood, MI 49518.
Send comments to Mr. Patrick T. Hughes, Assistant City Engineer, City of Kentwood, 4900 Breton Road, SE., Kentwood, MI 49518.

City of Lowell:

Maps available for inspection at City of Lowell City Hall, 301 E. Main Street, Lowell, MI 49331.
Send comments to Imperial Municipal Services, 301 E. Main Street, Lowell, MI 49331.

City of Rockford:

Maps available for inspection at City of Rockford City Hall, 7 S. Monroe Street, Rockford, MI 49341.
Send comments to Professional Code Inspectors, 7 S. Monroe Street, Rockford, MI 49341.

City of Walker:

Maps available for inspection at City of Walker City Hall, 4243 Remembrance Road NW., Walker, MI 49544.
Send comments to Mr. Scott Conners, City Engineer, 4243 Remembrance Road NW., Walker, MI 49544.

City of Wyoming:

Maps available for inspection at City of Wyoming Engineering Department, 2660 Burlingame Avenue, Wyoming, MI 49509.
Send comments to Mr. William Dooley, Director of Public Works, 2660 Burlingame Avenue, Wyoming, MI 49509.

Gaines Township:

Maps available for inspection at Attn: Jeff Gritter, 8555 Kalamazoo Avenue SE., Caledonia , MI 49316.
Send comments to Mr. Jeff Gritter, Township Engineer, 8555 Kalamazoo Avenue SE., Caledonia, MI 49316.

Grand Rapids Township:

Maps available for inspection at Grand Rapids Township Hall, 1836 Beltline Avenue, NE., Grand Rapids, MI 49525.
Send comments to Mr. Michael DeVries, Supervisor, 1836 Beltline Avenue, NE., Grand Rapids, MI 49525.

Lowell Township:

Maps available for inspection at Lowell Township Town Hall, 2910 Alden Nash Avenue SE., Lowell, MI 49331.
Send comments to Mr. Butch Visser, Building Official, 2910 Alden Nash Avenue, SE., Lowell, MI 49331.

Plainfield Township:

Maps available for inspection at Plainfield Township Building Inspections Department, 6161 Belmont Avenue NE., Belmont, MI.
Send comments to Mr. Robert C. Homan, Township Manager, 6161 Belmont Avenue. NE., Belmont, MI 49306.

Solon Township:

Maps available for inspection at Solon Township Town Hall, 2305 19 Mile Road, Cedar Springs, MI 49319.
Send comments to Mr. Bob Ellick, Supervisor, 2305 19 Mile Road, Cedar Springs, MI 49319.

Sparta Township:

Maps available for inspection at Sparta Township, 160 E. Division Street, Sparta, MI 49345.
Send comments to Mr. Casey Patterson, Building Inspector, 160 E. Division Street, Sparta, MI 49345.

Tyrone Township:

Maps available for inspection at Tyrone Township, 28 E. Muskegon Street, Kent City, MI 49330.
Send comments to Mr. Casey Patterson, Building Inspector, 28 E. Muskegon Street, Kent City, MI 49330.

Vergennes Township:

Maps available for inspection at Vergennes Township Town Hall, 10381 Bailey Drive NE., Lowell, MI 49331.
Send comments to Mr. Tim Wittenbach, Supervisor, 10381 Bailey Drive NE., Lowell, MI 49331.

Village of Casnovia:

Maps available for inspection at Village of Casnovia Town Hall, 141 N. Main Street, Casnovia, MI 49318.
Send comments to Imperial Municipal Services, 141 N. Main Street, Casnovia, MI 49318.

Village of Kent City:

Maps available for inspection at Village of Kent City Village Office, 83 Spring Street, Kent City, MI 49330.
Send comments to Mr. Steven Buckner, Village President, 83 Spring Street, Kent City, MI 49330.

Village of Sparta:

Maps available for inspection at Sparta Township, 160 E. Division Street, Sparta, MI 49345.
Send comments to Mr. Casey Patterson, Building Inspector, 160 E. Division Street, Sparta, MI 49345.

Barry County, Missouri and Incorporated Areas

Chapel Drain	At confluence with Kelly	None	+1,328	City of Monett.
	Just upstream of Chapel Drive	None	+1,336	
Tributary #1 to Unnamed	At confluence with Unnamed Tributary	None	+1,326	
Tributary to Clear Creek	Approximately 750 feet upstream of confluence with Unnamed Tributary.	None	+1,333	
Unnamed Tributary to Clear Creek:	At Lawrence County—Barry County Boundary	None	+1,285	
	Approximately 1075 feet upstream of Missouri State Highway "H" and just downstream of Farm Road 2330..	None	+1,377	

+North American Vertical Datum 1988

ADDRESS:

City of Monett:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Maps are available for inspection at City Hall, 217 Fifth Street, Monett, MO 65708. Send comments to The Honorable James Orr, Mayor, City of Monett, P.O. Box 110, Monett, MO 65708.				
Blaine County, Montana and Incorporated Areas				
Milk River:	Approximately 2.5 river miles downstream of U.S. Highway 2.	None	+2,287	Blaine County (Uninc. Areas) and Fort Belknap Indian Reservation.
	Approximately 4.7 river miles upstream of Kennedy Road.	None	+2,360	
Peoples Creek:	At confluence with Milk River	None	+2,297	Fort Belknap Indian Reservation.
	Approximately 11.5 miles upstream of confluence with Milk River (approximately 2.8 miles upstream of Road Bridge).	None	+2,339	
Peoples Creek-Split Flow:	Approximately 1.2 river miles upstream of confluence with South Dodson Canal.	None	+2,288	Fort Belknap Indian Reservation.
	Approximately 3.2 river miles upstream of Lodgepole Highway.	None	+2,319	

+North American Vertical Datum 1988

ADDRESSES:

Unincorporated Areas of Blaine County:

Maps are available for inspection at the County Courthouse, 400 Ohio Street, Chinook, MT 59523.
Send comments to Honorable Don Swenson, Chairman, Blaine County Board of Commissioners, 400 Ohio Street, Chinook, MT 59523.

Fort Belknap Indian Reservation:

Maps are available for inspection at the Tribal Office Building, Highway 2 & Route 66, Harlem, MT 59526.
Send comments to Honorable Benjamin Speakthunder, Tribal Council President, Rural Route 1, Box 6, Harlem, MT 59526.

Licking County, Ohio and Incorporated Areas				
Beaver Run	Approximately 200 feet downstream of State Route 79.	*870	+869	Licking County (Unic. Areas).
	Approximately 400 feet downstream of Canyon Road	*889	+886	Village of Hebron.
Bell Run	Approximately 800 feet downstream of U.S. Route 40	*894	+897	Licking County (Unic. Areas).
	Just downstream of Refugee Road	*904	+903	
Buckeye Lake		None	+893	Licking County (Unic. Areas), Village of Buckeye Lake.
Clear Run	Approximately 2,000 feet downstream of Newark-Granville Road.	*910	+902	Licking County (Uninc. Areas), Village of Granville.
	Approximately at State Route 661	*972	+966	
Heath Lateral B	Approximately 160 feet upstream of Franklin Avenue	*841	+838	City of Heath, City of Newark.
	Approximately 320 feet upstream of State Route 13	*870	+866	
Heath Lateral C	Approximately 400 feet downstream of 30th Street	*843	+844	City of Heath.
	Approximately 6,336 feet upstream of State Route 79	*877	+876	
Heath Lateral D	Just upstream of Irving Wick Drive East	*915	+908	Licking County (Uninc. Areas), City of Heath.
	Approximately 1,890 feet upstream of Irving Wick Drive East.	*935	+936	
Heath Lateral E	Approximately 1,250 feet downstream of Conrail Railroad.	*893	+894	
	Just downstream of State Route 79	*863	+862	
Heath Lateral EA	Approximately at confluence with Heath Lateral E	*873	+885	Licking County (Uninc. Areas), City of Heath.
	Approximately 3,600 feet upstream of confluence with Heath Lateral E.	*893	+891	
Heath Lateral F	Approximately 320 feet downstream of confluence with Heath Lateral FA.	*878	+877	City of Heath.
	Approximately 1,140 feet upstream of confluence with Health Lateral FA.	*889	+886	
Heath Lateral FA	Approximately 60 feet upstream of confluence with Health Lateral F.	*882	+878	City of Heath.
	Approximately 2,380 feet upstream of confluence with Heath Lateral F.	*896	+895	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Hebron Tributary	Approximately 900 feet downstream of State Route 79.	*878	+877	Licking County (Uninc. Areas), Village of Hebron.
	Just downstream of Cumberland Street	*887	+888	
Kiber Run	Approximately 5,100 feet downsteam of Mink Street ..	*1,048	+1,047	Licking County (Uninc. Areas), Village of Johnstown.
	Approximately 3,500 feet upstream of Mink Street	*1,078	+1,073	
Muddy Fork	Approximately 1,450 feet downstream of State Route 310.	*982	+980	Licking County (Uninc. Areas), City of Pataskala.
	Approximately 1,800 feet upstream of Columbia Road	*1,028	+1,024	
Raccoon Creek	Approximately 1,600 Feet downstream of CSX Railroad.	*817	+818	Licking County (Uninc. Areas), City of Newark, Village of Johnstown, Village of Alexandria, Village of Granville
	Approximately 1,100 feet upstream of State Route 37	*1,079	+1,080	
Ramp Creek	Approximately 850 feet downstream of Liberty Drive ..	*850	+849	Licking County (Uninc. Areas), City of Heath.
	Approximately 100 feet downstream of Thornwood Drive.	*885	+884	
Sharon Valley Run	Approximately at Country Club Road	*877	+876	Licking County (Uninc. Areas), City of Newark.
	Approximately 300 feet downstream of Jones Road	*947	+940	
South Fork Licking River	Downstream side of State Route 13	*815	+816	Licking County (Uninc. Areas), City of Heath, City of Hebron, City of Newark, City of Pataskala.
	Approximately 2,600 feet upstream of Mink Street Road.	*1,096	+1,095	

*National Geodetic Vertical Datum 1929
+North American Vertical Datum 1988

ADDRESSES:

Licking County (Unincorporated Areas):

Maps available for inspection at Licking County Administration Office, 20 South Second Street, Newark, Ohio 43055.
Send comments to Mr. Jim Mickey, 20 South Second Street, Newark, Ohio 43055.

Village of Alexandria:

Maps available for inspection at Village of Alexandria, 116 Granville Street, Alexandria, Ohio 43001.
Send comments to Honorable Jim Jasper, Mayor, 116 Granville Street, Alexandria, Ohio 43001.

Village of Buckeye Lake:

Maps availabe for inspection at Buckeye Lake Village Office, 5192 Walnut Road, Buckeye Lake, Ohio 43008.
Send comments to Honorable Frank Foster, Mayor, 5192 Walnut Road, Buckeye Lake, Ohio 43008.

Village of Granville:

Maps available for inspection at Jerry Turner/Bird and Bull Engineers & Surveyors, 2875 Dublin Granville Road, Columbus, Ohio 43235.
Send comments to Mr. Chris Strayer, Village Planner, 141 East Broadway, Granville, Ohio 43023.

Village of Hanover:

Maps available for inspection at Hanover Village Hall, 200 New Home Drive NE, Hanover, Ohio 43055.
Send comments to Honorable Duane Flowers, Mayor, 200 New Home Drive NE, Hanover, Ohio 43055.

Village of Hartford:

Maps available for inspection at Hartford Village Town Hall, 2 North High Street, Croton, Ohio 43013.
Send comments to Mr. Gordon Potter, 2 North High Street, Croton, Ohio 43013.

City of Heath:

Maps available for inspection at Heath Municipal Building, 1287 Hebron Road, Heath, Ohio 43056.
Send comments to Mr. John Groff, Chief of Building/Zoning, 1287 Hebron Road, Heath, Ohio 43056.

Village of Hebron:

Maps available for inspection at Village of Hebron Zoning Department, Attention: Theresa Ours, 116 W. Main Street, Hebron, Ohio 43025.
Send comments to Mr. Jerry Turner, Engineer, 2875 W. Dublin Granville Road, Columbus, Ohio 43235.

Village of Johnstown:

Maps available for inspection at Village of Johnstown, 599 South Main Street, Johnstown, Ohio 43031.
Send comments to Mr. Randy Ashbrook, Street Director, 599 South Main Street, Johnstown, Ohio 43031.

Village of Kirkersville:

Maps available for inspection at Kirkersville Village Hall, 135 N. 5th Street, Kirkersville, Ohio 43033.
Send comments to Mr. Mike Cloud, Zoning, 135 N. 5th Street, Kirkersville, Ohio 43033.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

City of Newark:

Maps available for inspection at City of Newark Division of Engineering, 40 West Main Street, Newark, Ohio 43055.
Send comments to Mr. Brian Morehead, City Engineer, 40 West Main Street, Newark, Ohio 43055.

City of Pataskala:

Maps available for inspection at City of Pataskala Administration Office, 196 East Broad Street, Pataskala, Ohio 43062.
Send comments to Mr. Alison Terry, Director of Planning, 196 East Broad Street, Pataskala, Ohio 43062.

City of Reynoldsburg:

Maps available for inspection at City of Reynoldsburg Municipal Building, 7232 East Main Street, Reynoldsburg, Ohio 43068.
Send comments to Mr. Stephen Moore, 7232 East Main Street, Reynoldsburg, Ohio 43068.

Village of St. Louisville:

Maps available for inspection at Village of St. Louisville, 257 South Sugar Street, St. Louisville, Ohio 43071.
Send comments to Mr. Dennis Ankrum, 257 South Sugar Street, St. Louisville, Ohio 43071.

Village of Utica:

Maps available for inspection at Village Administration Office, 39 Spring Street, Utica, Ohio 43080.
Send comments to Mr. Jud Brechler, Village Administrator, 39 Spring Street, Utica, Ohio 43080.

Salt Lake County, Utah and Incorporated Areas

Big Cottonwood Creek:	Approximately 140 feet upstream of confluence with Jordan River.	None	+ 4,246	Salt Lake County (Uninc. Areas).
	Approximately 60 feet upstream of Holladay Cottonwood Road.	None	+ 4,642	
	Approximately 120 feet upstream of Wasatch Boulevard.	None	+ 4,896	
Little Cottonwood Creek:	At confluence with Jordan Road	None	+ 4,252	Salt Lake County (Uninc. Areas).
	Just upstream of 2000 East Street	None	+ 4,593	
	Approximately 600 feet upstream of Route 209	None	+ 5,384	
Little Willow Creek:	At confluence with Willow Creek	None	+ 4,610	City of Draper.
	Approximately 1500 feet upstream of Hidden Brook Drive.	None	+ 5,094	City of Sandy.
Midas Creek:	At 11800 South Street	None	+ 4,562	City of Herriman, City of Riverton, Salt Lake County (Uninc. Areas).
	Approximately 430 feet upstream of 6000 West Street	None	+ 4,920	

+ North American Vertical Datum 1988

ADDRESSES:

Unincorporated Areas of Salt Lake County:

Maps are available for inspection at the Public Works Department, Engineering, 451 South State Street, Suite N. 3100, Salt Lake City, UT 84190.
Send comments to Honorable Peter Corroon, Salt Lake County, 2001 South State Street, Suite N 2100, Salt Lake City, UT 84190.

City of Draper:

Maps are available for inspection at the 12441 South 900 East, Draper, UT 84020.
Send comments to Honorable Darrell H. Smith, Mayor, City of Draper, 12441 South 900 East, Draper, UT 84020.

City of Herriman:

Maps are available for inspection at 13011 South Pioneer Street, Herriman, UT 84065.
Send comments to Honorable J. Lynn Crane, Mayor, City of Herriman, 13011 South Pioneer Street, Herriman, UT 84065.

City of Riverton:

Maps are available for inspection at 12765 South 1400 West, Riverton, UT 84065.
Send comments to Honorable R. Mont Evans, Mayor, City of Riverton, 12765 South 1400 West, Riverton, UT 84065.

City of Sandy City:

Maps are available for inspection at 10000 Centennial Parkway, Sandy, UT 84070.
Send comments to Honorable Tom Dolan, Mayor, City of Sandy City, 10000 Centennial Parkway, Sandy, UT 84070.

Williamson County, Tennessee and Incorporated Areas

Aden Camp Branch	At the confluence of Aden Camp Branch with Little Turnbull Creek.	None	+664	Williamson County (Uninc. Areas).
	Approximately 400 feet upstream of Bethshears Road	None	+873	City of Fairview.
Aenon Creek	At the confluence of West Fork Aenon Creek	None	+704	Williamson County (Uninc. Areas).
	Approximately 900 feet upstream of confluence of West Fork Aenon Creek.	None	+707	
Arkansas Creek	At the confluence of Arkansas Creek with South Harpeth River.	None	+663	Williamson County (Uninc. Areas).

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	Approximately 9,460 feet upstream of confluence of Harpendene Branch.	None	+700	
Arrington Creek	Approximately 4,100 feet upstream of confluence with Harpeth River.	*679	+682	Williamson County (Uninc. Areas).
	Approximately 410 feet downstream of Sanford Road	None	+796	
Arrington Creek Tributary 1	At confluence Arrington Creek Tributary 1 with Arrington Creek.	None	+699	Williamson County (Uninc. Areas).
	Approximately 1,950 feet upstream of the confluence of Arrington Creek Tributary 2.	None	+748	
Arrington Creek Tributary 2	At confluence of Arrington Creek Tributary 2 with Arrington Creek Tributary 1.	None	+734	Williamson County (Uninc. Areas).
	Approximately 2,930 feet upstream of the confluence with Arrington Creek Tributary 1.	None	+760	
Arrington Creek Tributary 3	At confluence of Arrington Creek Tributary 3 with Arrington Creek.	None	+736	Williamson County (Uninc. Areas).
	Approximately 1,500 feet upstream of the confluence with Arrington Creek Tributary 5.	None	+758	
Arrington Creek Tributary 4	At confluence of Arrington Creek Tributary 4 with Arrington Creek Tributary 3.	None	+743	Williamson County (Uninc. Areas).
	Approximately 3,310 feet upstream of the confluence with Arrington Creek.	None	+760	
Arrington Creek Tributary 5	At confluence Arrington Creek Tributary 5 with Arrington Creek Tributary 3.	None	+747	Williamson County (Uninc. Areas).
	Approximately 1,390 feet upstream of the confluence with Arrington Creek Tributary 3.	None	+760	
Big Turnbull Creek	Approximately 2,800 feet upstream of Old Cox Pike	None	+644	Williamson County (Uninc. Areas).
	Approximately 2,240 feet upstream of Old Franklin Road.	None	+685	
Brush Creek	Approximately 6,680 feet upstream of confluence of Brush Creek Tributary 1.	*676	+676	Williamson County (Uninc. Areas).
	Approximately 430 feet upstream of Jones Lane S.E.	None	+820	City of Fairview.
Brush Creek Tributary 1	Approximately 40 feet upstream of confluence with Brush Creek.	*615	+616	Williamson County (Uninc. Areas).
	Approximately 150 feet to the northwest of the intersection of Oak Tree Drive and Dody Drive.	None	+824	City of Fairview.
Burke Branch	At the confluence of Burke Branch with Mayes Creek	None	+700	Williamson County (Uninc. Areas).
	Approximately 2,240 feet upstream of Wilson Pike	None	+748	
Caney Fork Creek	At the confluence of Caney Fork Creek with South Harpeth River.	None	+619	Williamson County (Uninc. Areas).
	Approximately 8,300 feet upstream of confluence with South Harpeth River.	None	+656	
Dry Branch	Just downstream of Mallory Station Road	*692	+692	Williamson County (Uninc. Areas), City of Brentwood, City of Franklin.
	Approximately 80 feet upstream of Moores Lane	None	+771	
Fivemile Creek	At the confluence of Fivemile Creek Tributary 1 with Fivemile Creek.	*679	+680	Williamson County (Uninc. Areas).
	Approximately 450 feet upstream of Pratt Lane	None	+711	
Fivemile Creek Tributary 1	At the confluence at Fivemile Creek Tributary 1 with Fivemile Creek.	None	+680	Williamson County (Uninc. Areas).
	Approximately 2,930 feet upstream of Interstate 65	None	+746	
Flat Creek	Approximately 2,520 feet southeast of the intersection of Flat Creek Road and Reynolds Road.	None	+707	Williamson County (Uninc. Areas).
	Approximately 1,370 feet southeast of intersection of Cross Keys Road and Flat Creek Road.	None	+741	
Flat Rock Creek	Approximately 18,840 feet downstream of Horn Tavern Road.	None	+567	Williamson County (Uninc. Areas).
	Approximately 1,220 feet northwest of the intersection of Cox Pike North and Mary Susan Lane.	None	+807	City of Fairview.
Flat Rock Creek Tributary 1	At the confluence of Flat Rock Creek Tributary 1 with Flat Rock Creek.	None	+718	City of Fairview.
	Approximately 1,880 feet upstream of Highway 96	None	+811	
Goose Creek	Approximately 700 feet upstream of confluence with Fivemile Creek.	None	+669	Williamson County (Uninc. Areas).
	Approximately 260 feet north of the intersection of Goose Creek Bypass and Snowbird Hollow Road.	None	+771	
Grassy Branch	Approximately 2,490 feet upstream of Duplex Road	*711	+711	City of Spring Hill.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	Approximately 2,280 feet upstream of the confluence of Grassy Branch Tributary 1.	None	+720	
Grassy Branch Tributary 1	At the confluence of Grassy Branch Tributary 1 with Grassy Branch.	None	+712	City of Spring Hill.
	Approximately 480 feet upstream of the confluence with Grassy Branch.	None	+717	
Harpendene Branch	At the confluence of Harpendene Branch with Arkansas Creek.	None	+638	Williamson County (Uninc. Areas).
	Approximately 7,930 feet upstream of confluence with Arkansas Creek.	None	+695	
Harpeth River Tributary 1	Approximately 3,210 feet upstream of confluence with Harpeth River.	+677	+678	Williamson County (Uninc. Areas).
	Approximately 310 feet upstream of Murfreesboro Road.	None	+709	
Harrison Branch Creek	Approximately 11,600 feet upstream of confluence	None	+668	Williamson County (Uninc. Areas).
	Approximately 1,070 feet northwest of the intersection of Henderson Drive and Fairview Boulevard.	None	+767	City of Fairview.
Hickman Branch	At the confluence of Hickman Branch with Little Turnbull Creek.	None	+697	Williamson County (Uninc. Areas).
	Approximately 80 feet northwest of the intersection of Master Shane Road & Cox Run Court.	None	+831	City of Fairview.
Kelley Creek	At the confluence of Kelley Creek with South Harpeth Creek.	None	+646	Williamson County (Uninc. Areas).
	Approximately 220 feet upstream of Taylor Cemetery Road.	None	+688	
Liberty Creek	Just downstream of Eddy Lane	*645	+645	City of Franklin.
	Approximately 85 feet downstream of Hillhaven Lane	None	+700	
Lick Creek	Approximately 560 feet downstream of Porter Branch Road.	None	+646	Williamson County (Uninc. Areas).
	At the confluence of South Fork Lick Creek and North Fork Lick Creek.	None	+668	
Linton Branch	Approximately 14,000 feet southwest of the intersection of Ntchez Bend Road and Pasquo Road.	None	+623	Williamson County (Uninc. Areas).
	Approximately 9,400 feet southwest of the intersection of Natchez Bend Road and Pasquo Road.	None	+645	
Little Harpeth River	Approximately 410 feet downstream of Moores Lane	*708	+708	City of Brentwood.
	Approximately 2,250 feet upstream of Carriage Hills Drive.	None	+741	
Little Harpeth River Tributary 1.	Approximately 840 feet upstream of confluence with Little Harpeth River.	*629	+629	City of Brentwood.
	Approximately 1,355 feet upstream of River Oaks Road.	None	+654	
Little Harpeth River Tributary 2.	Approximately 240 feet upstream of Country Club Drive.	*645	+645	City of Brentwood.
	Approximately 30 feet downstream of Maryland Way	None	+710	
Little Harpeth River Tributary 3.	At the confluence of Little Harpeth River	None	+664	City of Brentwood.
	Approximately 35 feet downstream of Centerview Drive.	None	+690	
Little Harpeth River Tributary 4.	Approximately 1,590 feet upstream of confluence with Little Harpeth River.	*656	+656	City of Brentwood.
	Approximately 480 feet upstream of Shenandoah Drive.	None	+692	
Little Harpeth River Tributary 5.	At the confluence of Little Harpeth River Tributary 5 with Little Harpeth River Tributary 4.	None	+660	City of Brentwood.
	Approximately 85 feet downstream of Mayfield Place	None	+708	
Little Harpeth River Tributary 6.	At the confluence of Little Harpeth River Tributary 6 with Little Harpeth River Tributary 4.	None	+692	City of Brentwood.
	Approximately 1,455 feet upstream of Old Smyrna Road.	None	+726	
Little Harpeth River Tributary 7.	At the confluence of Little Harpeth River Tributary 7 and Little Harpeth River Tributary 8.	None	+676	City of Brentwood.
	Approximately 1,605 feet upstream of Wikle Road	None	+744	
Little Harpeth River Tributary 8.	At the confluence of Little Harpeth River Tributary 7 and Little Harpeth River Tributary 8.	None	+676	City of Brentwood.
	Approximately 2,745 feet upstream of General Macarthur Drive.	None	+722	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Little Harpeth River Tributary 9.	At the confluence of Little Harpeth River Tributary 9 and Little Harpeth River Tributary 7.	None	+707	City of Brentwood.
	Approximately 850 feet upstream of Ashby Drive	None	+890	
Little Harpeth River Tributary 10.	At the confluence of Little Harpeth River Tributary 10 and Little Harpeth River Tributary 7.	None	+679	City of Brentwood.
	Approximately 220 feet downstream of Vaden Drive ..	None	+744	
Little Harpeth River Tributary 11.	At the confluence of Little Harpeth River Tributary 11 and Little Harpeth River Tributary 10.	None	+701	City of Brentwood.
	Approximately 4,520 feet upstream of Interstate 65	None	+754	
Little Turnbull Creek	Approximately 1,720 feet downstream of Crow Cut Road.	None	+599	Williamson County (Uninc. Areas).
	Approximately 4,320 feet upstream of confluence of Little Turnbull Creek Tributary 1.	None	+822	City of Fairview.
Little Turnbull Creek Tributary 1.	At the confluence of Little Turnbull Creek Tributary 1 with Little Turnbull Creek.	None	+756	City of Fairview.
	Approximately 2,360 feet upstream of confluence with Little Turnbull Creek.	None	+819	
Mayes Creek	Just downstream of North Chapel Road	*664	+664	Williamson County (Uninc. Areas).
	Approximately 5,400 feet upstream of Tulloss Road ...	None	+753	
McCanless Branch	At the confluence of McCanless Branch with Arrington Creek.	None	+734	Williamson County (Uninc. Areas).
	Approximately 3,480 feet upstream of Old Horton Highway.	None	+757	
McCrory Creek	Just downstream of McDaniel Road	*682	+682	Williamson County (Uninc. Areas).
	Approximately 300 feet upstream of Arno-College Grove Road.	None	+733	
McCutcheon Creek	Approximately 740 feet downstream of Amacher Drive	*743	+743	City of Spring Hill.
	Approximately 1,240 feet upstream of Amacher Drive	None	+760	
Mill Creek	Approximately 400 feet upstream of Rocky Fork Road	*612	+612	Williamson County (Uninc. Areas).
	Approximately 11,080 feet upstream of Rocky Fork Road.	None	+661	Town of Nolensville.
North Fork Lick Branch	At the confluence of North Fork Lick Branch with Lick Creek.	None	+668	Williamson County (Uninc. Areas).
	Approximately 5,040 feet upstream of Old Lick Creek Road.	None	+688	
Overall Creek	Approximately 1,320 feet upstream of confluence with Harpeth River.	None	+709	Williamson County (Uninc. Areas).
	Approximately 720 feet upstream of Horton Highway	None	+769	
South Fork Lick Branch	At the confluence of South Fork Lick Branch with Lick Creek.	None	+668	Williamson County (Uninc. Areas).
	Approximately 210 feet upstream of South Lick Creek Road.	None	+677	
South Harpeth Creek	At the confluence of South Harpeth Creek with South Harpeth River.	None	+633	Williamson County (Uninc. Areas).
	At the confluence of Kelley Creek	None	+646	
South Harpeth River	Approximately 590 feet upstream of confluence of Caney Fork Creek.	*619	+619	Williamson County (Uninc. Areas).
	At the confluence of South Harpeth Creek	None	+633	
Starnes Creek	Just downstream of Arno Road	*675	+675	Williamson County (Uninc. Areas).
	Approximately 920 feet upstream of State Route 840	None	+755	
Unnamed Tributary 2 to Harpeth River.	Approximately 1,200 feet upstream of Eddy Lane	*640	+640	City of Franklin.
	Approximately 580 feet upstream of Jordan Road	None	+680	
Unnamed Tributary to Mill Creek.	Approximately 1,270 feet upstream of confluence with Mill Creek.	*603	+603	Williamson County (Uninc. Areas).
	Approximately 2,140 feet upstream of Clovercroft Road.	None	+667	Town of Nolensville.
West Fork Aenon Creek	At the confluence of West Fork Aenon Creek with Aenon Creek.	None	+704	Williamson County (Uninc. Areas).
	Approximately 5,840 feet upstream of the confluence with Aenon Creek.	None	+721	

*National Geodetic Vertical Datum 1929
+North American Vertical Datum 1988

ADDRESSES:

Unincorporated Areas of Williamson County:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps are available for inspection at the Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, TN 37064.
Send comments to the Honorable Roger Anderson, Mayor, Williamson County, 1320 West Main Street, Suite 125, Franklin, TN 37064.

City of Brentwood:

Maps are available for inspection at Brentwood City Hall, 5211 Maryland Way, Brentwood, TN 37027.
Send comments to the Honorable Ann Dunn, Mayor, City of Brentwood, P.O. Box 788, Brentwood, TN 37024.

City of Fairview:

Maps are available for inspection at Fairview City Hall, 1874 Fairview Boulevard, Fairview, TN 37062.
Send comments to the Honorable Stewart Johnson, Mayor, City of Fairview, P.O. Box 69, Fairview, TN 37062.

City of Franklin:

Maps are available for inspection at Franklin City Hall, 109 Third Avenue South, Franklin, TN 37064.
Send comments to the Honorable Thomas Miller, Mayor, City of Franklin, 109 Third Avenue South, Franklin, TN 37064.

Town of Nolensville:

Maps are available for inspection at Nolensville Town Hall, 7240 Nolensville Road, Suite 102, Nolensville, TN 37135.
Send comments to the Honorable Charles F. Knapper, Mayor, Town of Nolensville, P.O. Box 547, Nolensville, TN 37135.

City of Spring Hill:

Maps are available for inspection at Spring Hill City Hall, 199 Town Center Parkway, Spring Hill, TN 37174.
Send comments to the Honorable Danny Leverette, Mayor, City of Spring Hill, P.O. Box 789, Spring Hill, TN 37174.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 5, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 05–23949 Filed 12–12–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU50

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Laguna Mountains Skipper

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 Laguna Mountains skipper (*Pyrgus ruralis lagunae*), pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 6,662 acres (ac) (2,696 hectares (ha)) fall within the boundaries of the proposed critical habitat in two units that are divided into a total of seven subunits on Laguna and Palomar Mountains in San Diego County, California. Five subunits are occupied. Two subunits are not known to be currently occupied or occupied at the time of listing, but are connected to occupied habitat, were historically occupied, and also contain physical and biological features essential to the conservation of the species.

DATES: We will accept comments from all interested parties until February 13, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 27, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials—identified by RIN 1018–AU50—concerning this proposal by any one of several methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Carlsbad, CA 92011.

2. You may hand-deliver written comments to our Office, at the above address.

3. You may fax your comments to 760–431–9624.

4. You may send comments by electronic mail (e-mail) to *FW8pchskipper@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

5. Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

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 Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Carlsbad, CA 92011 (telephone 760–431–9440).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Carlsbad, CA 92011, (telephone 760/431–9440; facsimile 760/431–9624).

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 (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Laguna Mountains skipper habitat, and which areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species and why, and which areas not occupied at the listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas

and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) 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**). Please submit Internet comments to *FW8pchskipper@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Laguna Mountains skipper'' 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 Carlsbad Fish and Wildlife Office at phone number 760–431–9440. Please note that the Internet address *FW8pchskipper@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 above address.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 471 species, or 37 percent of the 1,272 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,272 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, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service.* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, 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.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for 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, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled 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). These costs, which are not required for many other conservation actions, 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 designation of critical habitat in this proposed rule. For more information on the Laguna Mountains skipper, refer to the final rule listing the species as endangered, published in the **Federal Register** on January 16, 1997 (62 FR 2313).

Species Description

The Laguna Mountains skipper is a member of the family Hesperiidae (skippers), and is one of two recognized subspecies of *Pyrgus ruralis.* Skippers are generally small bodied with a fast, erratic flight pattern. Adult Laguna Mountains skippers have a wingspan of approximately one inch (two and a half centimeters) (Garth and Tilden 1986; Osborne *in litt.* 2004) and are distinguished from other co-occurring skipper species by their checkered dark brown and white appearance (Osborne *in. litt.* 2004). The submarginal spots on the hind wing form a distinguishing ''X'' shape, and the dark bands on the marginal fringe of the hind wing extend prominently across the fringe (Levy 1994).

Adult females lay their eggs on the outer leaves of their hostplant (i.e., a plant on which the larvae feed and develop). In many species of butterfly, the hostplants are limited to one or two species. The main hostplant for the Laguna Mountains skipper is *Horkelia clevelandii* (Cleveland's horkelia). Eggs of the Laguna Mountains skipper develop and hatch in approximately 12 to14 days (Mattoni and Longcore 1998; Pratt 1999), with some variation likely due to habitat microsite conditions and local weather. Development from egg to pupa takes approximately 7 weeks.

Habitat

The Laguna Mountains skipper has specialized habitat requirements within a narrow geographic distribution. The Laguna Mountains skipper is known to occur in a matrix of pine and mixed conifer/oak forests, meadows, small forest openings, and forest edges that support larval host plants between 3,800 and 6,000 feet (ft) (1,158 and 2,000 meters (m)) in elevation (Emmel and Emmel 1973; Levy 1997; Mattoni and Longcore 1998; Pratt 1999; Osborne 2002).

Habitat has been primarily identified by the presence or abundance of the species' main larval host plant, *Horkelia clevelandii.* However, habitat also consists of all resources, such as nectar-producing plants and surface moisture, or puddles, that provide feeding, breeding and sheltering for adult butterflies. One scientific study of Laguna Mountains skipper habitat has been conducted. Williams and Bailey (2004) investigated geographic variation in presumed habitat characteristics among geographic locations, and differences in habitat characteristics between sites with and without a known history of Laguna Mountains skipper observations. Research indicates that sites with a known history of Laguna Mountains skipper sightings had more bare ground, larger host plant patches, and larger, taller *H. clevelandii* plants than sites where Laguna Mountains skippers had not been seen.

Until recently, *Horkelia clevelandii* was thought to be the only host plant species used by the Laguna Mountains skipper. However, the use of *Potentila glandulosa* as a host plant in the wild was first documented on Palomar Mountain by Pratt (1999). This was later confirmed in 2004 in Mendenhall Valley (Ken Osborne, pers. comm. 2004). Both host plant species grow in clusters low to the ground and are relatively small, long-lived, non-woody (herbaceous) plants in the rose family (Rosacae).

Status and Distribution

When the Laguna Mountains skipper was listed in 1997, the species was known from Palomar and Laguna Mountains in San Diego County (62 FR 2313). However, its primary host plant, *Horkelia clevelandii,* has a much wider distribution, extending from the San Jacinto, Palomar, Cuyamaca, and Laguna Mountains of southwestern California, south to Sierra San Pedro Martir, in Baja, California, Mexico (Keck 1938; Hickman 1993). Within the Laguna Mountains, the surrounding forests are dominated by Jeffery pine (*Pinus jefferii*) and black oak (*Quercus kelloggii*), while the Palomar Mountains are dominated by a mixed forest comprised of Jeffery pine, white fir (*Abies concolor*), incense cedar (*Calocedrus decurrens*), and black oak.

During the 1950s and 1960s, Laguna Mountains skippers were commonly recorded from several locations on Laguna Mountain, including Big Laguna, Boiling Springs, East Laguna, Horse Haven Springs, Laguna Lake and Little Laguna Meadow (Levy 1994). Surveys conducted since 1994 have detected adult Laguna Mountains skippers only near Little Laguna Meadow, at the El Prado/Laguna Campground (Pratt 1999). Although historic records of the species in the Laguna Mountains with specific location descriptions are all in the vicinity of the greater Laguna Meadow, this is likely an artifact of access and where sites were known to collectors (Levy 1994). Other areas, such as Horse Meadow to the south, also contain features identified as essential for sustaining Laguna Mountains skipper populations (Levy 1994).

The Laguna Mountains skipper was first recorded on Palomar Mountain in 1947, at an unspecified location (San Diego Natural History Museum, in Levy 1994). In 1991 Dan Lindsley collected two specimens in ''the last small meadow before the Palomar Observatory'' (Levy 1994). Since its discovery, the Laguna Mountains skipper has been recorded at several Palomar Mountain locations on Federal, State, and private lands, but only one site (Mendenhall Valley) exists where adults can be reliably found (Levy 1994, 1996, 1997; Pratt 1999; Faulkner *in litt.* 2000; Osborne 2002, 2003). New sightings in 2001 in the Pine Hills area (a location not known at the time of listing) provide the lowest elevation observation record of this species, recorded at 3,840 ft (1,170 m) (Osborne 2002).

The listing rule (62 FR 2313) stated that the Laguna Mountains skipper had been reported from four (unspecified) sites on Palomar Mountain. Upon evaluation of GIS data available at the time of listing, and other data available at time of listing (e.g., Levy 1994), we identified these sites as lower French Valley, Palomar Observatory Campground, Palomar Observatory Meadow, and Mendenhall Valley. The more recent Observatory Trail locations are in a meadow/woodland transition area at the southeastern end of Upper French Valley, and the campground location is between Mendenhall Valley and Upper French Valley. The campground and trail sites are small

woodland openings that are unlikely to support an isolated population long-term. Mark-release-recapture studies of a related skipper species (the grizzled skipper, *Pyrgus malvae*) occupying similar habitat recorded adult movement among forest openings of more than 0.62 mi (1 km) (M. Brereton in Levy 1994). Therefore, small forest openings create landscape connectivity (habitat the species is capable of occupying and moving through) among larger meadows. The distributions of small occupied forest openings and meadows (meadow complexes) indicate historic occupancy of Laguna Mountains skipper populations throughout the northern Palomar Mountains meadow system, including unsurveyed portions of Upper French Valley.

Based on the findings of the mark-release recapture study (M. Brereton in Levy 1994), grizzled skipper adults are sedentary most of the time, rarely moving further than 20 m, but do move distances greater than 1 km. This movement pattern and the distribution of observations among several small forest openings and meadows are characteristic of local alpine butterfly populations belonging to a greater metapopulation distribution (e.g., Boughton 1999). If the Laguna Mountains skipper populations are characterized by metapopulation dynamics, habitat patches within the population distribution not occupied at any given time are still required for population viability.

No repeated, systematic population status studies of the Laguna Mountains skipper have been conducted. While individuals can regularly be found in the Mendenhall Valley on Palomar Mountain, the long-term viability of the species on Laguna Mountain is uncertain. Surveys suggest the species has declined in the Laguna Mountains, although very little is known regarding the species' population status or dynamics throughout its range. The Laguna Mountains skipper has never been recorded outside of Laguna or Palomar Mountains; however, the species may have been more widespread historically throughout the higher elevations of San Diego County (Brown *in litt.* 1991). The species could potentially occupy the Cuyamaca Mountains north of Laguna Mountain and the San Jacinto Mountains in Riverside County, as these areas all contain meadows and host plants (Keck 1938) at appropriate elevations, and are proximal to occupied mountains. However, few survey data exist for mountains where the Laguna Mountains skippers were not known to historically occur.

Historically, Palomar Mountain populations were considered small compared to Laguna Mountain populations, with only 5 specimens reported prior to 1991 (Brown *in litt.* 1991). Today, Palomar Mountain appears to sustain the largest known population of the Laguna Mountains skipper. The number of individuals occupying Mendenhall Valley has been estimated between approximately 240 individuals in 1994 (Levy 1994) and approximately 1,470 individuals in 1998 (Mattoni and Longcore 1998). Levy (1994) based his estimate on adult surveys and stated that his estimate of approximately 240 adult butterflies could be much higher than the actual number. Mattoni and Longcore (1998) based their estimate on the number of eggs and larvae found on host plants within a specific area. From this they extrapolated to an adult population estimate based on the abundance of host plants, average fecundity, and equal sex ratios. These estimates differ significantly, at least in part due to differences in methodology.

Populations in the Laguna Mountains appear to be small, and possibly bordering on extirpation. Surveys of varying intensity and duration were conducted in 8 of the 10 years between 1994 and 2003. During this 10-year period, only 4 adult skippers were found: a single individual in 1995 (Levy 1997), 1 adult in 1996 (Levy 1997), and 2 adults in 1999 (Pratt 1999). All observations of adult skippers have been at the El Prado/Laguna Campground. A single skipper larval shelter was found in 1997 at the Meadow Kiosk along the Sunrise Highway (Pratt 1999), documenting a new location of occupied habitat. However, no adults were observed at this location. Adult skippers have not been documented in the Laguna Mountains since 1999.

Previous Federal Actions

For information on previous Federal actions for the Laguna Mountains skipper, refer to the final rule listing for this species and the Quino Checkerspot Butterfly (*Euphydryas editha quino*) as endangered (62 FR 2313). At the time of listing, the Service determined that critical habitat was not prudent, citing that the publication of precise maps and descriptions of critical habitat could result in additional habitat destruction through trampling, discing, and grading as well as collection (62 FR 2313). On January 10, 2003, the Center for Biological Diversity (Center) filed a lawsuit against the Service for violations under the Act and the Administrative Procedure Act (5 U.S.C. Subchapter II) for the Service's failure to designate critical habitat for the species (*CBD* v. *USFWS Civ. No. 03–0058–BTM (NLS)*). In a stipulated settlement agreement dated July 29, 2003, the Service agreed to reconsider its ''not prudent'' finding and propose critical habitat, if prudent, on or before November 30, 2005, and to publish a final critical habitat rule, if prudent, on or before November 30, 2006. This proposed rule complies with the settlement agreement. We have reconsidered our not prudent finding, and now believe that identification of primary constituent elements and essential areas (critical habitat designation) may provide educational information to individuals, local and State governments, and other entities. Because this species is so limited in geographic range, most landowners and collectors have been aware of its presence since listing. Unlike the Quino checkerspot butterfly listed in the same rule, collectors have always known where to find the Laguna Mountains skipper, however, access to the best site is restricted because it can only be reached through private land (Mendenhall Valley).

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, as defined under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

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. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

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 when 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).) In addition, 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. However, an area currently occupied by the species that was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, may therefore, be 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

As required by section 4(b)(2) the Act we use the best scientific data available in determining areas that contain features that are essential to the conservation of the Laguna Mountains skipper. These include data from field surveys for *Horkelia clevelandii,* regional Geographic Information System (GIS) vegetation and species coverages, data compiled in the California Natural Diversity Database (CNDDB), and survey data for the Laguna Mountains skipper from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. Based on the assessment of those physical and biological components identified above, the known and historic occurrences of Laguna Mountains skipper, and available information on the distribution of *H. clevelandii,* we identified proposed critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (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; 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 primary constituent elements required for the Laguna Mountains skipper are derived from the biological needs of the species as described in the Background section of this proposal and the final listing rule.

Food, Water, or other Nutritional or Physiological Requirements

Laguna Mountain skippers require sunlight provided in the open meadows, open woodlands, or other forest openings. Butterflies are exothermic and, like most insects, body temperature is of overriding importance in limiting flight (Chapman 1982). Butterfly flight activity is limited by light intensity. Therefore, they require areas for basking in the sun in order to raise their body temperature for flight (Chapman 1982). Additionally, surface moisture such as puddles and seeps (not flowing water) provide water and minerals for adults. Adult Laguna Mountains skippers need annual or perennial nectar sources including meadow and woodland-associated herbaceous annual wildflowers, and perennial herbs (e.g.

Lasthenia spp. (goldfields), Pentachaeta aurea (golden-rayed pentachaeta), *Ranunculus* spp. (buttercups), and *Sidalcea* spp. (checkerbloom)).

Sites for Breeding and Reproduction

The Laguna Mountains skippers requires *Horkelia clevelandii* host plants to lay eggs on and for the caterpillars to eat and construct pupal shelters, and may also require *Potentila glandulosa*. Host plant patches must be dense enough to support breeding (provide multiple and diverse sites for depositing eggs), although the exact host-plant patch size and density required for breeding is not known. A ''patch'' of host plants may consist of one to several clumps of *H. clevelandii* or *P. glandulosa* growing together, as well as numerous individual plants that are growing in close proximity.

Space for Individual and Population Growth, and for Normal Behavior

Because the current geographic range is fragmented and small, population densities are relatively low, and the quality of most breeding habitat has been compromised to some degree by grazing, recreation impacts, or exotic plant invasion, all landscape connectivity areas among occupied meadows and forest openings that adult Laguna Mountains skippers can move through are required for survival of the species. In order to facilitate the use of connectivity areas for adult movement between breeding sites, it is important to maintain populations of hostplants and adult nectar sources, even if they are not likely to be used for breeding.

Historic and Geographic Distribution of the Species

The occupied areas proposed for designation are representative of the historic and geographical distribution of the species. Areas proposed for designation that are not known to be occupied were all historically occupied and will restore a portion of the historic geographic distribution of Laguna Mountains skipper. Connectivity is required for recolonization of habitat to occur (e.g., after extirpation by fire) and for genetic diversity to be maintained.

Primary Constituent Elements for the Laguna Mountains skipper

The specific primary constituent elements required for the Laguna Mountains skipper are derived from the biological needs as described in the Background section of this proposal. These include all areas within Palomar and Laguna Mountains that sustain the main host plant of the Laguna Mountains skipper, *Horkelia clevelandii*, and associated habitat containing *Potenetila gandulosa*, including movement areas between meadows and forest openings. The specific biological and physical habitat features identified as essential for sustaining Laguna Mountains skipper populations are:

1. The host plants, *Horkelia clevelandii* or *Potentila glandulosa*, in meadows or forest openings needed for reproduction.

2. Nectar sources suitable for feeding by adult Laguna Mountains skipper, including *Lasthenia* spp., *Pentachaeta aurea, Ranunculus* spp., and *Sidalcea* spp. found in woodlands or meadows.

3. Wet soil or standing water associated with features such as seeps, springs, or creeks where water and minerals are obtained during the adult flight season.

This proposed designation is designed for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the Laguna Mountains skipper. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria Used To Identify Critical Habitat

To delineate proposed critical habitat, we identified meadow complexes (meadows and forest openings connected by open forest canopy) on Palomar and Laguna Mountains known to be occupied by the Laguna Mountains skipper at the time of listing and known to be currently occupied. The species is currently known to occupy only one meadow complex (Laguna Meadow) on Laguna Mountain, but we also identified two other meadow complexes on Laguna Mountain that contain habitat with features essential to the conservation of the species. These meadow complexes have not been extensively surveyed and are not currently known to be occupied. However, Laguna Mountain as a whole was known to be historically occupied by the skipper. These areas are important for expansion and enhancement of populations in Laguna Meadow and are therefore considered essential to the conservation of the species.

Using infrared satellite imagery, we delineated the proposed critical habitat boundaries by outlining identified meadow complexes. In delineating proposed critical habitat boundaries, we included areas within meadow complexes containing relatively dense *Horkelia clevelandii* observations. Finally, maps were produced by fitting a 100 meter grid outline to the initial hand-drawn outlines.

When determining proposed critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this proposed rule developed areas such as buildings, paved areas, and other structures that lack PCEs for the Laguna Mountains skipper. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing and contain sufficient primary constituent elements to support life history functions essential for the conservation of the species. We are also proposing subunits that were not known to be occupied at the time of listing but have been determined to be essential for the conservation of the Laguna Mountains skipper. Occupied subunits were designated based on sufficient PCEs being present to support Laguna Mountains skipper life processes. All subunits contain all of the PCEs and support multiple life processes.

At this time, based on the best available information, we have determined that without management and protection for the habitat of the Laguna Mountains skipper in the areas not known to be occupied at the time of listing or known to be currently occupied, conservation of the species will not be possible in the foreseeable future, and these areas are accordingly essential to the conservation of the species.

Special Management Considerations or Protections

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those

physical and biological features essential to the conservation of the species pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection. Threats to those essential features that define critical habitat (primary constituent elements) for the Laguna Mountains skipper include the direct and indirect impacts of human development and recreation, surface and groundwater management practices, and grazing intensity.

Areas proposed as critical habitat are composed of 36 percent private land holdings, where habitat is subject to rural development and other land use changes, overgrazing, potential stream and groundwater diversions, and recreational activities. State and Federal landholdings (6 and 36 percent, respectively) are also subject to grazing and recreational activities. While designation of critical habitat does not impose any management requirements, particularly on State or private land, the following are measures that could be undertaken to benefit the species.

Grazing can cause direct mortality of larvae and eggs by trampling and consumption. The density of cattle grazed in meadow habitat should be monitored and regulated, as well as levels of habitat degradation resulting from existing grazing. Adaptive management may be needed to adjust cattle grazing intensity, and protection measures may include exclosures to prevent grazing. Monitoring of potential changes in hydrology caused by stream and groundwater diversions should be undertaken as well as any necessary management to prevent habitat conversion.

On Palomar Mountain, commercial drinking water projects and private stream alterations are currently diverting stream and groundwater to an unknown extent. Drying of meadows results in vegetation changes (for a general discussion see Naumburg *et al.* 2005) that could eliminate primary constituent elements within Laguna Mountains skipper habitat (e.g. host plants and surface moisture, PCEs 1 and 3). Recreational activities such as camping and horseback riding increase encroachment of exotic vegetation and can cause direct mortality of Laguna Mountains skipper larvae by trampling (Pratt 1999). Alteration of host plant distribution and availability, plant canopy closure, and availability of resources such as nectar and moisture (all PCEs) can result from disturbance by cattle and humans, and habitat conversion due to changes in surface and groundwater availability.

Pursuant to a consultation with the Service under section 7 of the Act, the Cleveland National Forest has implemented some measures on their land to minimize impacts to the Laguna Mountains skipper. However, no management plan exists that addresses conservation of this species in the Cleveland National Forest. Therefore, special management may be needed to minimize impacts to the skipper resulting from recreation and exotic plant invasion.

We believe areas proposed for designation as critical habitat contain physical and biological features essential for the conservation of the Laguna Mountains skipper, and may require some level of management and/or protection to address current and future threats to the Laguna Mountains skipper. Subunits 2A, 2B, and 2C may require special management due to all threats described above. All subunits in Unit 1 may require special management due to all threats described above except diverting stream and groundwater. Subunit 2D may require primarily management of recreation impacts. Economic or fire management activities, such as logging, fuel modification, and relatively low density grazing, should not adversely modify habitat if carefully managed to minimize or avoid destruction of host plants.

Proposed Critical Habitat Designation

We are proposing 2 units made up of 7 subunits, totaling 6,662 ac (2,696 ha) as critical habitat for the Laguna Mountains skipper. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, contain the primary constituent elements and may require special management, and those additional areas that were not known to be occupied at the time of listing but found to be essential to conservation of the Laguna Mountains skipper. Proposed critical habitat areas encompass approximately 3,887 ac (1,574 ha; 58 percent) of Federal land ownership, 381 ac (154 ha; 6 percent) of State land ownership, and 2,394 ac (968 ha; 36 percent) of private land ownership. No Tribal lands were included in this proposed designation.

The 2 units proposed as critical habitat are: (1) Palomar Mountain; and, (2) Laguna Mountain. Brief descriptions of the units are presented below. Four subunits (1A, 2A, 2B, 2D) were known to be occupied at the time of listing, one subunit was not known to be occupied at the time of listing but is known to be currently occupied (2C), and two subunits (1B and 1C) were not known to be occupied at the time of listing and are not known to be currently occupied, but are connected to occupied habitat, were historically occupied, and contain physical and biological features essential to the conservation of the species and are themselves essential to the conservation of the species.

All subunits not currently known to be occupied are contiguous with occupied subunits and ensure representation of the historic geographical distribution not otherwise represented by the occupied subunits. There is potential for current occupancy in subunits not currently known to be occupied, as survey efforts in these areas have been limited. No conclusive evidence is available to indicate complete absence of Laguna Mountains skipper at any of these sites; few, incomplete, or no recent surveys have been conducted at sites not currently known to be occupied. Species detectability is generally low (*e.g.* Pratt 1999), particularly if the population occurs in low numbers. Surveys may have missed sightings, as shown by repeated collections near Little Laguna Lake where historically there were many observations, followed by repeated reports of no occurrences, with subsequent population ''re-discovery'' (Pratt 1999). The current, overall population size of the Laguna Mountains skipper is at such a low level that it was thought to have possibly been extirpated in the Laguna Mountains at the time of listing (Levy 1994; 62 FR 2313).

While occupied subunits provide some habitat for current populations, unoccupied subunits would provide habitat for population augmentation either through natural means, or by re-introduction. (**Note:** We believe that given the species' small population size and very limited range, reintroduction may be necessary for long-term persistence of the species. We are not currently developing a reintroduction plan. However, we've identified the potential need for a propagation and reintroduction program as a recovery task in the draft recovery plan citing that such a program may be necessary for recovery of the species, especially in the Laguna Mountains where the species has been documented to occur in one meadow area. We do not anticipate that section 10(j) would apply to any reintroduction (or augmentation) of Laguna Mountains skipper on either the Palomar or Laguna Mountains since they would not be separated geographically from the existing populations.) As stated in the final rule

listing the species as endangered (62 FR 2313), one of several naturally occurring events could extirpate the existing population due to its very restricted range and extremely localized distribution. The inclusion of unoccupied subunits in critical habitat would reduce the threat that catastrophic naturally occurring events such as the Cedar Fire that burned part of Laguna Mountain in 2003 (*e.g.*, IBAERT 2003) would extirpate the population by providing additional available habitat that the species could expand into. Therefore, we have determined that expansion of the species into habitat not currently known to be occupied and connectivity with existing occupied habitat is necessary to conserve the species. Based on the best available information, we have determined that management and protection for the Laguna Mountains skipper in areas historically occupied and known to be currently occupied on Laguna Mountain is necessary.

Unit Descriptions

Unit 1: Laguna Mountain

Unit 1 encompasses approximately 3,763 ac (1,523 ha), and is approximately centered on Laguna Mountain peak located in south-central San Diego County east of the community of Alpine. This unit is divided into three subunits containing all the primary constituent elements. This unit is crucial to the species the species primarily because the species was first described from this unit and represents the southernmost portion of the species range. Maintaining two widely separate units (*i.e.*, Laguna and Palomar Mountains) and multiple subunits limits the potential for a catastrophic event from extirpating all remaining populations. Because the number of known occupied sites and low population densities are not sufficient to overcome the threat of extirpation, connectivity and expansion into unoccupied meadow complexes is necessary for the conservation of the Laguna Mountains skipper. Connectivity is important for recolonization of habitat to occur (*e.g.* after extirpation by fire) and genetic diversity to be maintained among local populations.

Unit 1A: Laguna Meadow

Unit 1A (2,829 ac (1,145 ha)) is currently occupied and was known to be occupied at the time of listing. This subunit contains habitat features essential to the conservation of the species and is the site where the species was first described (*i.e.*, northern Laguna Meadow, near Little Laguna Lake), and is where adults could be reliably found historically. The Cleveland National Forest lands in this unit is subject to grazing and recreational activities and may require special management such as grazing density adjustments or additional exclosures to protect host plants. This subunit contains 2,724 (1,102 ha) of Federal land (*i.e.*, U.S. Forest Service) and 105 ac (43 ha) of privately owned land.

Unit 1B: Filaree Flat

Subunit 1B (388 ac (157 ha)) is not currently known to be occupied, and was not known to be occupied at the time of listing, but was historically occupied. This subunit is essential because it (1) contains habitat features essential to the conservation of populations known to occupy Subunit 1A, (2) provides for population expansion and enhancement, (3) minimizes habitat fragmentation, and (4) is representative of the historic geographical and ecological distribution of the species. Lands in this subunit are subject to grazing and recreational activities and may require special management such as grazing density adjustments or additional exclosures to protect host plants. This subunit contains 368 ac (149 ha) of Federal land (*i.e.*, U.S. Forest Service) and 20 ac (8 ha) of privately owned land.

Unit 1C: Agua Dulce Campground and Horse Meadow

Subunit 1C (546 ac (221 ha)) is not currently known to be occupied and was not known to be occupied at the time of listing. This subunit is essential because it (1) contains habitat features essential to the conservation of populations known to occupy Subunit 1A; (2) provides for population expansion and enhancement; (3) minimizes habitat fragmentation; and, (4) is representative of the historic geographical and ecological distribution of the species. Habitat in this subunit is subject to grazing and recreational activities and may require special management such as grazing density adjustments or additional exclosures to protect host plants. This subunit contains 417 ac (169 ha) of Federal land (*i.e.*, U.S. Forest Service) and 129 ac (52 ha) of privately owned land.

Unit 2: Palomar Mountain

Unit 2 encompasses approximately 2,899 ac (1,173 ha), and is approximately centered on Palomar Mountain peak located in north-central San Diego County near the border of Riverside County. Unit 2 consists of subunits containing all the primary constituent elements. Unit 2 includes the most densely populated area in the species' range and encompasses the northernmost portion of the range. Maintaining two widely separate units (*i.e.*, Laguna and Palomar Mountains) and multiple subunits limits the potential for a catastrophic event from extirpating all remaining populations.

Unit 2A: Mendenhall Valley and Observatory Campground

Subunit 2A (1,092 ac (442 ha)) is known to be currently occupied and was occupied at the time of listing. Subunit 2A supports the largest known population of Laguna Mountains skipper and represents the best opportunity for the survival of this species. This unit is composed of a large amount of private land holdings with habitat potentially subject to future rural development and other land use changes, overgrazing, stream diversion, and private recreational use. This subunit is the only meadow complex (*i.e.*, Mendenhall Valley and associated forest openings) where multiple adults have been consistently detected since the time of listing. Subunit 2A (1) contains habitat features essential for conservation of the species; (2) conserves at least part of the only relatively stable, highest density local population; and (3) minimizes habitat fragmentation. This area may require special management such as host plant distribution monitoring, exclosure maintenance, and grazing density adjustments. This subunit contains 231 (94 ha) of Federal land (*i.e.*, U.S. Forest Service) and 861 (348 ha) of privately owned land.

Unit 2B: Upper French Valley, Observatory Trail, and Palomar Observatory Meadows

Subunit 2B (998 ac (404 ha)) is known to be currently occupied and was occupied at the time of listing. The distribution of small forest openings and meadows and the five observation locations along the Observatory Trail indicate historic occupancy of Laguna Mountains skipper populations in unsurveyed portions of Upper French Valley. Subunit 2B: (1) Contains habitat features essential for conservation of the species; (2) provides for population expansion and enhancement; and, (3) minimizes habitat fragmentation. This area may require special management such as host plant distribution monitoring, grazing and recreation exclosure maintenance, and grazing density adjustments. This subunit contains 93 (38 ha) of Federal land (*i.e.*,

U.S. Forest Service) and 905 ac (366 ha) of privately owned land.

Unit 2C: Upper Doane Valley and Girl Scout Camp

Subunit 2C (547 ac (221 ha)) is known to be currently occupied, but was not known to be occupied at the time of listing. Subunit 2C is also essential to the conservation of this species because it (1) contains habitat features essential to the conservation of populations known to occupy Subunit 2A, (2) allows population expansion and enhancement, and (3) minimizes habitat fragmentation. This area may require special management such as host plant distribution monitoring, exclosure maintenance, and grazing density adjustments. This subunit contains 40 (16 ha) of Federal land (*i.e.*, U.S. Forest Service), 316 ac (128 ha) of privately owned land, and 191 ac (77 ha) of State owned land (*i.e.* California State Parks).

Unit 2D: Lower French Valley and Lower Doane Valley

Subunit 2D (547 ac (221 ha)) is known to be currently occupied and was occupied at the time of listing. Subunit 2C (1) contains habitat features essential to the conservation of populations known to occupy Subunit 2A, (2) allows population expansion and enhancement, and (3) minimizes habitat fragmentation. This area may require special management such as hostplant distribution monitoring, exclosure maintenance, and grazing density adjustments. This subunit contains 14 (6 ha) of Federal land (*i.e.*, U.S. Forest Service), 58 ac (23 ha) of privately owned land, and 190 ac (77 ha) of State owned land (*i.e.* California State Parks).

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 402.02, 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.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

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. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion 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)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or 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 jeopardy to the listed species or 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.

Federal activities that may affect the Laguna Mountain skipper or their designated 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.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Laguna Mountains Skipper and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for Laguna Mountains skipper jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the Laguna Mountains skipper. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the Laguna Mountains skipper in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Laguna Mountains skipper critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of Laguna Mountains skipper critical habitat units is to support viable core area populations.

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 species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the Laguna Mountains skipper is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Laguna Mountains skipper include, but are not limited to:

(1) Actions that destroy Laguna Mountains skipper host plants and immature life stages of the species. Such activities could include, but are not limited to overgrazing by livestock, logging, and recreational activities. These activities could eliminate breeding and nectaring resources for the adults, and directly destroy eggs, pupae, or larvae.

(2) Actions that would long-term or permanently destroy habitat containing primary constituent elements. Such activities could include, but are not limited to, removal or destruction of host plants and nectar sources by paving or piling logs; erection of permanent structures or cultivation of large shrubs or trees that impede adult movement; manipulation of seeps, springs, or creeks that eliminates surface moisture; paved road construction in occupied habitat; and rural development that eliminates or fragments habitat. These activities reduce the amount of available habitat and directly and indirectly increase the extirpation probability of associated Laguna Mountains skipper populations.

(3) Actions that would alter the vegetation of meadow habitat, for example invasion of exotic species or forest encroachment. Such activities could include, but are not limited to, stream or groundwater diversion. These activities could decrease the area of open meadow and soil moisture content and eliminate suitable Laguna Mountains skipper oviposition sites.

Economic or fire management activities, such as logging, fuel modification, and relatively low density grazing should not adversely modify habitat if carefully managed to minimize or avoid destruction of host plants.

Exclusions Under Section 4(b)(2) of the Act

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We are not aware of any habitat conservation plans currently being developed for Laguna Mountains skipper on any lands included in this proposal and the proposed designation does not include any Tribal lands or trust resources. Therefore, we are not proposing any exclusion of critical habitat under section 4(b)(2) of the Act.

The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, habitat containing essential features for the Laguna Mountains skipper may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 242.19.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the Laguna Mountains skipper 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. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://carlsbad.fws.gov,* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

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 3 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 copies 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 the comment period 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. 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 (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) 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). Under Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, 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 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** so that it is available for public review and comments. The draft economic analysis can be obtained from the internet website at *http://www.fws.gov/carlsbad/* or by contacting the Laguna Mountains skipper directly (see **ADDRESSES**).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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 ESA 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 for an additional 60 days. 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 Laguna Mountains skipper is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation 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. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

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. 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) We do not believe that this rule will significantly or uniquely affect small governments because it is a relatively small designation on mostly public and private land. The public lands being proposed for critical habitat designation are owned by the United States Forest Service and the State of California. None of these government entities fit the definition of ''small governmental jurisdiction.'' As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and as appropriate, review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the Laguna Mountains skipper in a takings implications assessment. The takings implications assessment concludes that the proposed designation of critical habitat will not result in significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Laguna Mountains skipper 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 proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Laguna Mountains skipper.

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 will be working with the tribes on

whose land where there is a possibility of Laguna Mountains skipper occupancy to more precisely determine the distribution of Laguna Mountains skipper habitat and occupancy, and management options. No Laguna Mountains skippers have been reported from Tribal lands. Therefore, no designation of critical habitat for the Laguna Mountains skipper has been proposed on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Carlsbad Fish and Wildlife Office.

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 § 17.11(h), revise the entry for ''Skipper, Laguna Mountains '' under ''INSECTS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules	
Common name	Scientific name							
*	*	*	*	*	*	*		
INSECTS								
*	*	*	*	*	*	*		
Skipper, Laguna Mountains.	*Pyrgus ruralis lagunae.*	U.S.A.	Entire		E	604	17.95(i)	NA
*	*	*	*	*	*	*		

3. In § 17.95(i), add the entry for Laguna Mountains Skipper (*Pyrgus ruralis lagunae*) under ''INSECTS'' to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(i) Insects.

* * * * *

Laguna Mountains Skipper (*Pyrgus ruralis lagunae*)

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Laguna Mountains skipper are the habitat components that provide:

(i) The host plants, *Horkelia clevelandii* or *Potentila glandulosa,* in meadows or forest openings needed for reproduction.

(ii) Nectar sources suitable for feeding by adult Laguna Mountains skipper, including *Lasthenia* spp., *Pentachaeta aurea, Ranunculus* spp., and *Sidalcea* spp.

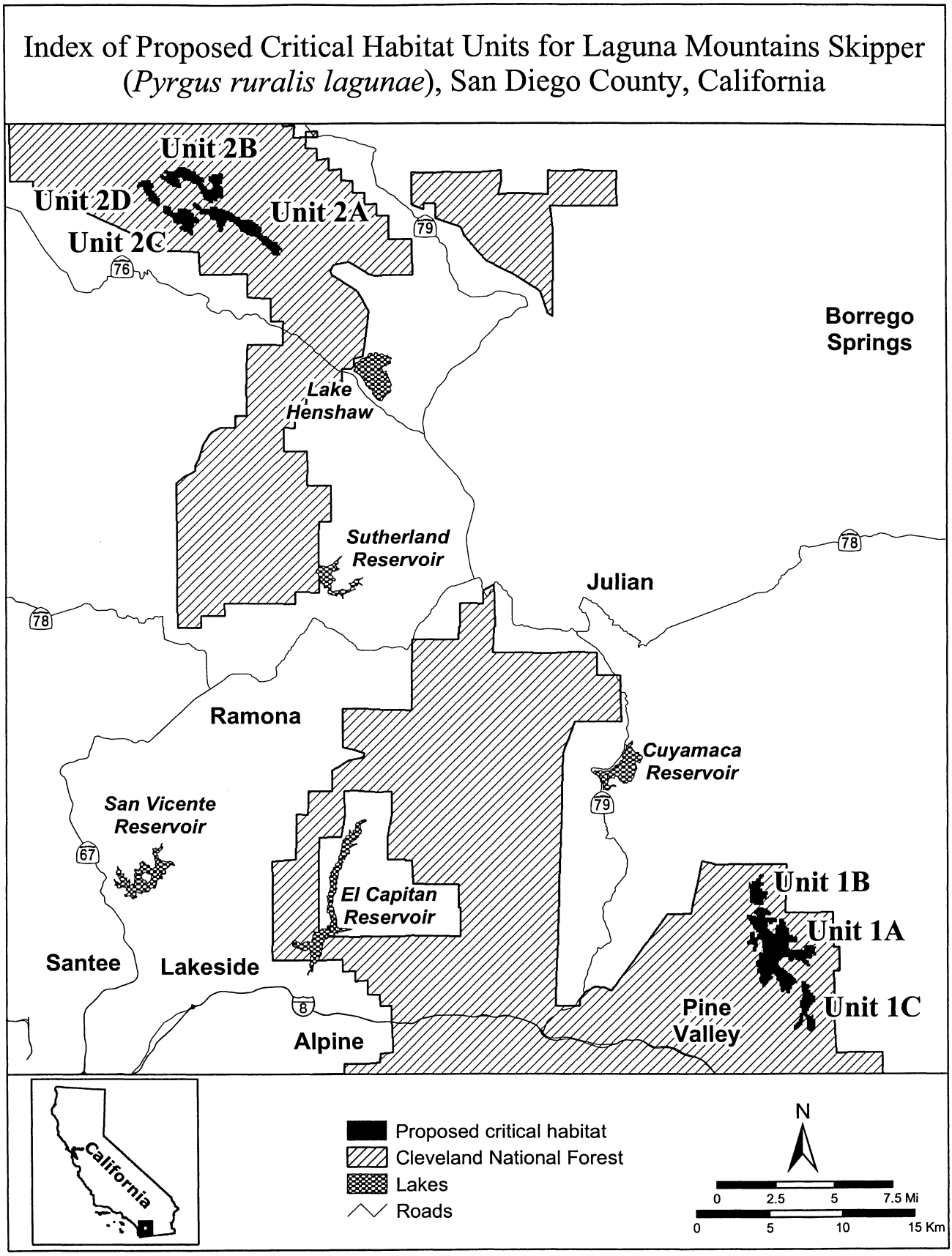
(iii) Wet soil or standing water associated with features such as seeps, springs, or creeks where water and minerals are obtained during the adult flight season.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a., on a base of USGS 1:24,000 quadrangle maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) **Note:** Map 1 (index map) follows.

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(6) Unit 1: Laguna Mountain, San Diego County, California. From USGS 1:24,000 quadrangle maps Monument Peak and Mount Laguna.

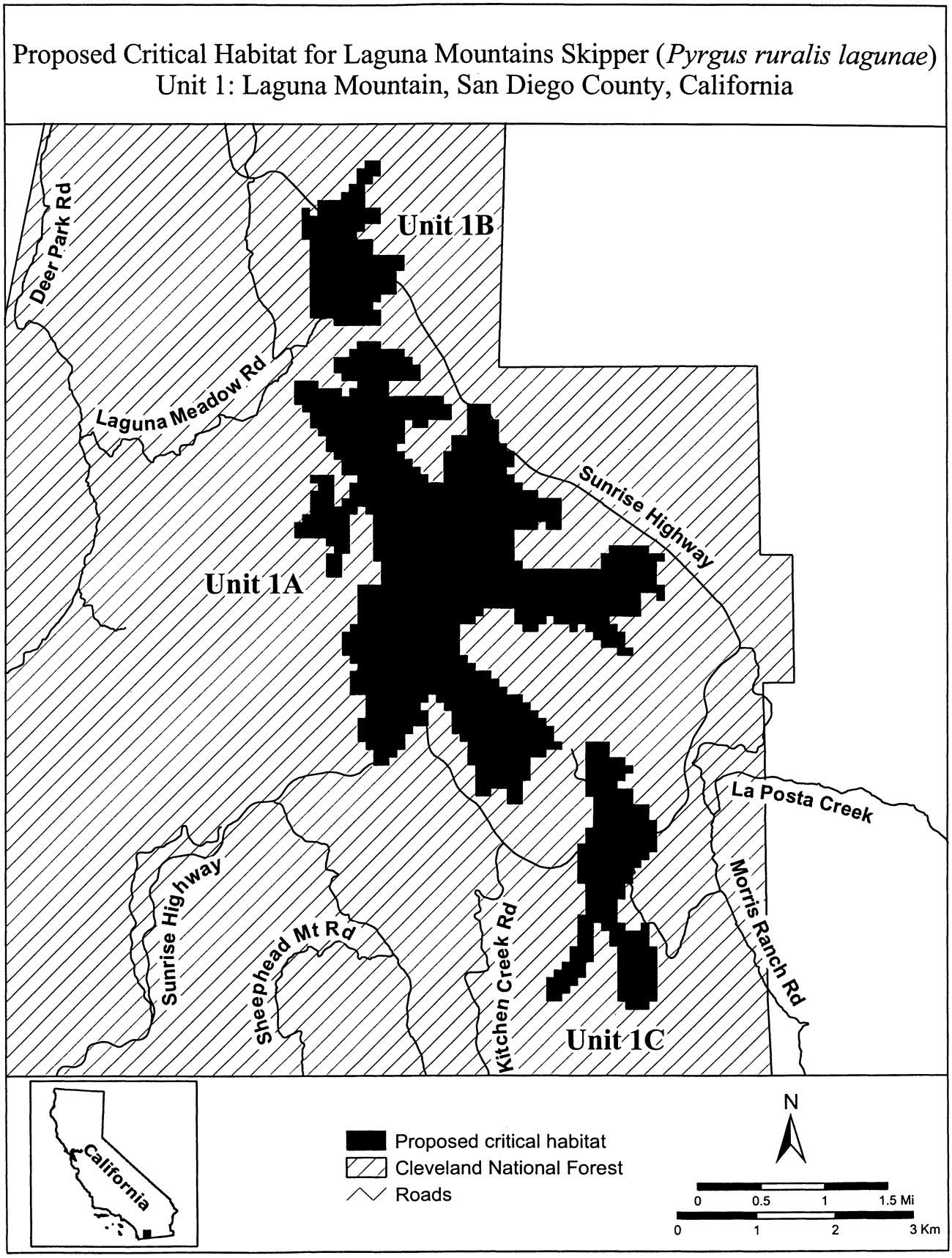
(i) Subunit 1A: lands bounded by the following UTM NAD27 coordinates (E,N): 553000, 3637800; 553000, 3638000; 553100, 3638000; 553100, 3638100; 553600, 3638100; 553600, 3638000; 553800, 3638000; 553800, 3637900; 553700, 3637900; 553700, 3637600; 553800, 3637600; 553800, 3637400; 553700, 3637400; 553700, 3637500; 553500, 3637500; 553500, 3637200; 553100, 3637200; 553100, 3637100; 553200, 3637100; 553200, 3637000; 553300, 3637000; 553300, 3636800; 553400, 3636800; 553400, 3636700; 553200, 3636700; 553200, 3636800; 553000, 3636800; 553000, 3636900; 552900, 3636900; 552900, 3637000; 552800, 3637000; 552800, 3637100; 552700, 3637100; 552700, 3637000; 552600, 3637000; 552600, 3637100; 552400, 3637100; 552400, 3637200; 552300, 3637200; 552300, 3637100; 552200, 3637100; 552200, 3637000; 552000, 3637000; 552000, 3637100; 551900, 3637100; 551900, 3637300; 551500, 3637300; 551500, 3637200; 551400, 3637200; 551400, 3637100; 551200, 3637100; 551200, 3636700; 551300, 3636700; 551300, 3636600; 551400, 3636600; 551400, 3636500; 551600, 3636500; 551600, 3636400; 551700, 3636400; 551700, 3636300; 551800, 3636300; 551800, 3636200; 552000, 3636200; 552000, 3636100; 552100, 3636100; 552100, 3636000; 552200, 3636000; 552200, 3635900; 552300, 3635900; 552300, 3635800; 552400, 3635800; 552400, 3635600; 552500, 3635600; 552500, 3635500; 552300, 3635500; 552300, 3635400; 552100, 3635400; 552100, 3635100; 552000, 3635100; 552000, 3634800; 551800, 3634800; 551800, 3635000; 551600, 3635000; 551600, 3634900; 551400, 3634900; 551400, 3635300; 551300, 3635300; 551300, 3635600; 551200, 3635600; 551200, 3635700; 551100, 3635700; 551100, 3636000; 551000, 3636000; 551000, 3636100; 550900, 3636100; 550900, 3636200; 550800, 3636200; 550800, 3636100; 550700, 3636100; 550700, 3636000; 550800, 3636000; 550800, 3635800; 550600, 3635800; 550600, 3635700; 550500, 3635700; 550500, 3635500; 550400, 3635500; 550400, 3635400; 550300, 3635400; 550300, 3635300; 550100, 3635300; 550100, 3635500; 550000, 3635500; 550000, 3635600; 549900, 3635600; 549900, 3635900; 550000, 3635900; 550000, 3636200; 549800, 3636200; 549800, 3636500; 549900, 3636500; 549900, 3636600; 549800, 3636600; 549800, 3636700; 549700, 3636700; 549700, 3637000; 549800, 3637000; 549800, 3637100; 549900, 3637100; 549900, 3637600; 550200, 3637600; 550200, 3637900; 550100, 3637900; 550100, 3638500; 550000, 3638500; 550000, 3638600; 549900, 3638600; 549900, 3638500; 549800, 3638500; 549800, 3638000; 549700, 3638000; 549700, 3637700; 549500, 3637700; 549500, 3638000; 549600, 3638000; 549600, 3638100; 549500, 3638100; 549500, 3638200; 549100, 3638200; 549100, 3638400; 549200, 3638400; 549200, 3638500; 549300, 3638500; 549300, 3638800; 549400, 3638800; 549400, 3638900; 549300, 3638900; 549300, 3639000; 549600, 3639000; 549600, 3638600; 549700, 3638600; 549700, 3638700; 549800, 3638700; 549800, 3638900; 549900, 3638900; 549900, 3639000; 549700, 3639000; 549700, 3639200; 549600, 3639200; 549600, 3639300; 549500, 3639300; 549500, 3639500; 549400, 3639500; 549400, 3639600; 549300, 3639600; 549300, 3639800; 549200, 3639800; 549200, 3639900; 549100, 3639900; 549100, 3640200; 549400, 3640200; 549400, 3640100; 549700, 3640100; 549700, 3640000; 549800, 3640000; 549800, 3640100; 549900, 3640100; 549900, 3640200; 549700, 3640200; 549700, 3640300; 549600, 3640300; 549600, 3640500; 549800, 3640500; 549800, 3640600; 549900, 3640600; 549900, 3640700; 550200, 3640700; 550200, 3640600; 550500, 3640600; 550500, 3640500; 550600, 3640500; 550600, 3640400; 550700, 3640400; 550700, 3640200; 550300, 3640200; 550300, 3640000; 551000, 3640000; 551000, 3639900; 551100, 3639900; 551100, 3639700; 550800, 3639700; 550800, 3639600; 550600, 3639600; 550600, 3639700; 550500, 3639700; 550500, 3639400; 550400, 3639400; 550400, 3639300; 550500, 3639300; 550500, 3639200; 550600, 3639200; 550600, 3639100; 550700, 3639100; 550700, 3639000; 550800, 3639000; 550800, 3638900; 551000, 3638900; 551000, 3639300; 551100, 3639300; 551100, 3639500; 551300, 3639500; 551300, 3639900; 551600, 3639900; 551600, 3639700; 551700, 3639700; 551700, 3639400; 551800, 3639400; 551800, 3639300; 551900, 3639300; 551900, 3639100; 551800, 3639100; 551800, 3639000; 551900, 3639000; 551900, 3638900; 552000, 3638900; 552000, 3638800; 552200, 3638800; 552200, 3638700; 552500, 3638700; 552500, 3638300; 552300, 3638300; 552300, 3638400; 552200, 3638400; 552200, 3638300; 551900, 3638300; 551900, 3637900; 552000, 3637900; 552000, 3637800; 553000, 3637800.

(ii) Subunit 1B: lands bounded by the following UTM NAD27 coordinates (E,N): 550000, 3643000; 550200, 3643000; 550200, 3642800; 550100, 3642800; 550100, 3642700; 550000, 3642700; 550000, 3642400; 550200, 3642400; 550200, 3642200; 550000, 3642200; 550000, 3642100; 549900, 3642100; 549900, 3642000; 550100, 3642000; 550100, 3641800; 550500, 3641800; 550500, 3641600; 550400, 3641600; 550400, 3641300; 550200, 3641300; 550200, 3641200; 550100, 3641200; 550100, 3641100; 550200, 3641100; 550200, 3640900; 549600, 3640900; 549600, 3641000; 549300, 3641000; 549300, 3642000; 549200, 3642000; 549200, 3642400; 549300, 3642400; 549300, 3642300; 549400, 3642300; 549400, 3642500; 549700, 3642500; 549700, 3642600; 549800, 3642600; 549800, 3642700; 549900, 3642700; 549900, 3642900; 550000, 3642900; 550000, 3643000.

(iii) Subunit 1C: lands bounded by the following UTM NAD27 coordinates (E,N): 552800, 3635600; 553100, 3635600; 553100, 3635400; 553300, 3635400; 553300, 3635300; 553400, 3635300; 553400, 3635200; 553300, 3635200; 553300, 3635100; 553200, 3635100; 553200, 3635000; 553400, 3635000; 553400, 3634800; 553600, 3634800; 553600, 3634600; 553700, 3634600; 553700, 3634200; 553600, 3634200; 553600, 3634100; 553500, 3634100; 553500, 3634000; 553400, 3634000; 553400, 3633800; 553300, 3633800; 553300, 3633600; 553200, 3633600; 553200, 3633300; 553300, 3633300; 553300, 3633200; 553500, 3633200; 553500, 3633300; 553600, 3633300; 553600, 3633000; 553700, 3633000; 553700, 3632300; 553600, 3632300; 553600, 3632200; 553300, 3632200; 553300, 3632300; 553200, 3632300; 553200, 3633000; 553100, 3633000; 553100, 3633200; 553000, 3633200; 553000, 3633300; 552900, 3633300; 552900, 3632800; 552800, 3632800; 552800, 3632600; 552700, 3632600; 552700, 3632500; 552600, 3632500; 552600, 3632400; 552500, 3632400; 552500, 3632300; 552300, 3632300; 552300, 3632600; 552400, 3632600; 552400, 3632700; 552500, 3632700; 552500, 3632800; 552600, 3632800; 552600, 3633000; 552700, 3633000; 552700, 3633400; 552800, 3633400; 552800, 3633800; 552700, 3633800; 552700, 3634300; 552800, 3634300; 552800, 3634500; 552900, 3634500; 552900, 3634900; 552800, 3634900; 552800, 3635600.

(iv) **Note:** Unit 1 (Map 2) follows.

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(7) Unit 2: Palomar Mountain, San Diego County, California. From USGS 1:24,000 quadrangle maps Boucher Hill and Palomar Observatory.

(i) Subunit 2A: lands bounded by the following UTM NAD27 coordinates (E, N): 511300, 3689300; 511400, 3689300; 511400, 3689200; 511600, 3689200; 511600, 3689100; 511700, 3689100; 511700, 3689000; 511800, 3689000; 511800, 3688900; 512300, 3688900; 512300, 3688800; 512400, 3688800; 512400, 3689000; 512900, 3689000; 512900, 3688900; 513200, 3688900; 513200, 3688800; 513400, 3688800; 513400, 3688700; 513700, 3688700; 513700, 3688600; 513900, 3688600; 513900, 3688500; 514000, 3688500; 514000, 3688400; 514100, 3688400; 514100, 3688300; 514400, 3688300; 514400, 3688200; 514500, 3688200; 514500, 3688100; 515300, 3688100; 515300, 3688000; 515400, 3688000; 515400, 3687900; 515500, 3687900; 515500, 3687800; 515700, 3687800; 515700, 3687600; 515900, 3687600; 515900, 3687300; 515800, 3687300; 515800, 3687200; 515900, 3687200; 515900, 3687100; 516000, 3687100; 516000, 3687000; 516300, 3687000; 516300, 3686900; 516400, 3686900; 516400, 3686800; 516500, 3686800; 516500, 3686700; 516600, 3686700; 516600, 3686600; 517000, 3686600; 517000, 3686300; 517200, 3686300; 517200, 3686200; 517300, 3686200; 517300, 3686000; 517100, 3686000; 517100, 3685800; 517200, 3685800; 517200, 3685700; 516700, 3685700; 516700, 3685800; 516600, 3685800; 516600, 3686000; 516500, 3686000; 516500, 3686100; 516400, 3686100; 516400, 3686200; 516300, 3686200; 516300, 3686300; 516200, 3686300; 516200, 3686400; 516000, 3686400; 516000, 3686600; 515900, 3686600; 515900, 3686700; 515800, 3686700; 515800, 3686800; 515700, 3686800; 515700, 3686900; 515500, 3686900; 515500, 3687000; 515200, 3687000; 515200, 3687100; 514900, 3687100; 514900, 3687200; 514800, 3687200; 514800, 3687300; 514500, 3687300; 514500, 3687500; 514400, 3687500; 514400, 3687600; 514300, 3687600; 514300, 3687700; 514200, 3687700; 514200, 3687800; 514100, 3687800; 514100, 3687900; 514000, 3687900; 514000, 3688000; 513700, 3688000; 513700, 3688100; 513500, 3688100; 513500, 3688000; 513400, 3688000; 513400, 3687700; 513300, 3687700; 513300, 3687400; 513200, 3687400; 513200, 3687300; 513000, 3687300; 513000, 3687600; 512900, 3687600; 512900, 3688000; 512800, 3688000; 512800, 3688100; 512500, 3688100; 512500, 3688200; 512400, 3688200; 512400, 3688400; 512300, 3688400; 512300, 3688500; 512000, 3688500; 512000, 3688600; 511900, 3688600; 511900, 3688500; 511700, 3688500; 511700, 3688800; 511500, 3688800; 511500, 3688900; 511400, 3688900; 511400, 3689000; 511300, 3689000; 511300, 3689100; 511200, 3689100; 511200, 3689200; 511300, 3689200; 511300, 3689300.

(ii) Subunit 2B: lands bounded by the following UTM NAD27 coordinates (E,N): 513000, 3690900; 513000, 3690800; 513200, 3690800; 513200, 3690600; 513100, 3690600; 513100, 3690400; 513200, 3690400; 513200, 3690300; 513300, 3690300; 513300, 3690000; 513200, 3690000; 513200, 3689900; 513300, 3689900; 513300, 3689600; 512900, 3689600; 512900, 3689400; 512700, 3689400; 512700, 3689500; 512600, 3689500; 512600, 3689300; 512300, 3689300; 512300, 3689400; 512200, 3689400; 512200, 3689500; 512000, 3689500; 512000, 3689700; 511900, 3689700; 511900, 3689900; 511800, 3689900; 511800, 3690200; 511700, 3690200; 511700, 3690300; 511600, 3690300; 511600, 3690500; 511500, 3690500; 511500, 3690600; 511200, 3690600; 511200, 3690700; 511100, 3690700; 511100, 3690800; 510800, 3690800; 510800, 3690900; 510700, 3690900; 510700, 3690800; 510600, 3690800; 510600, 3690900; 510500, 3690900; 510500, 3691000; 510200, 3691000; 510200, 3690900; 510300, 3690900; 510300, 3690600; 510400, 3690600; 510400, 3690300; 510200, 3690300; 510200, 3690400; 509800, 3690400; 509800, 3690500; 509700, 3690500; 509700, 3690600; 509500, 3690600; 509500, 3690700; 509400, 3690700; 509400, 3690800; 509300, 3690800; 509300, 3690900; 509100, 3690900; 509100, 3691000; 509000, 3691000; 509000, 3691200; 509200, 3691200; 509200, 3691100; 509400, 3691100; 509400, 3691300; 509300, 3691300; 509300, 3691500; 509500, 3691500; 509500, 3691400; 510000, 3691400; 510000, 3691500; 510100, 3691500; 510100, 3691600; 510200, 3691600; 510200, 3691700; 510700, 3691700; 510700, 3691600; 511000, 3691600; 511000, 3691500; 511100, 3691500; 511100, 3691400; 511400, 3691400; 511400, 3691200; 511600, 3691200; 511600, 3691100; 511700, 3691100; 511700, 3691000; 511900, 3691000; 511900, 3690900; 512000, 3690900; 512000, 3690700; 511800, 3690700; 511800, 3690600; 511900, 3690600; 511900, 3690500; 512000, 3690500; 512000, 3690400; 512100, 3690400; 512100, 3690300; 512200, 3690300; 512200, 3690200; 512500, 3690200; 512500, 3690300; 512700, 3690300; 512700, 3690400; 512600, 3690400; 512600, 3690600; 512500, 3690600; 512500, 3690700; 512400, 3690700; 512400, 3690800; 512300, 3690800; 512300, 3691100; 512500, 3691100; 512500, 3691200; 513100, 3691200; 513100, 3691300; 513200, 3691300; 513200, 3691200; 513300, 3691200; 513300, 3690900; 513000, 3690900; excluding lands bounded by the following UTM NAD27 coordinates (E,N): 509900, 3691000; 510100, 3691000; 510100, 3690900; 510000, 3690900; 510000, 3690800; 509900, 3690800; 509900, 3691000; and 512800, 3691000; 513000, 3691000; 513000, 3690900; 512800, 3690900; 512800, 3691000.

(iii) Subunit 2C: lands bounded by the following UTM NAD27 coordinates (E, N): 509200, 3689100; 509400, 3689100; 509400, 3689000; 509700, 3689000; 509700, 3688700; 509800, 3688700; 509800, 3688600; 510200, 3688600; 510200, 3688900; 510800, 3688900; 510800, 3688800; 511100, 3688800; 511100, 3688600; 511200, 3688600; 511200, 3688500; 511300, 3688500; 511300, 3688400; 511200, 3688400; 511200, 3688300; 511500, 3688300; 511500, 3688200; 511600, 3688200; 511600, 3687900; 511300, 3687900; 511300, 3687600; 511200, 3687600; 511200, 3687500; 511100, 3687500; 511100, 3687400; 511200, 3687400; 511200, 3687100; 511000, 3687100; 511000, 3687200; 510900, 3687200; 510900, 3687300; 510600, 3687300; 510600, 3687500; 510500, 3687500; 510500, 3687400; 510400, 3687400; 510400, 3687500; 510300, 3687500; 510300, 3687600; 510400, 3687600; 510400, 3687700; 510500, 3687700; 510500, 3687800; 510400, 3687800; 510400, 3687900; 510300, 3687900; 510300, 3687800; 510100, 3687800; 510100, 3687900; 509900, 3687900; 509900, 3688200; 509800, 3688200; 509800, 3688300; 509700, 3688300; 509700, 3688400; 509500, 3688400; 509500, 3688500; 509300, 3688500; 509300, 3688600; 509200, 3688600; 509200, 3689100.

(iv) Subunit 2D: lands bounded by the following UTM NAD27 coordinates (E,N): 507700, 3690800; 508000, 3690800; 508000, 3690700; 508100, 3690700; 508100, 3690800; 508300, 3690800; 508300, 3690600; 508400, 3690600; 508400, 3690500; 508500, 3690500; 508500, 3690300; 508400, 3690300; 508400, 3690100; 508500, 3690100; 508500, 3690000; 508600, 3690000; 508600, 3689900; 508700, 3689900; 508700, 3689700; 508800, 3689700; 508800, 3689600; 508900, 3689600; 508900, 3689100; 508700, 3689100; 508700, 3689200; 508600, 3689200; 508600, 3689300; 508400, 3689300; 508400, 3689400; 508200, 3689400; 508200, 3689800; 508000, 3689800; 508000, 3690000; 507900, 3690000; 507900, 3690200; 507800,

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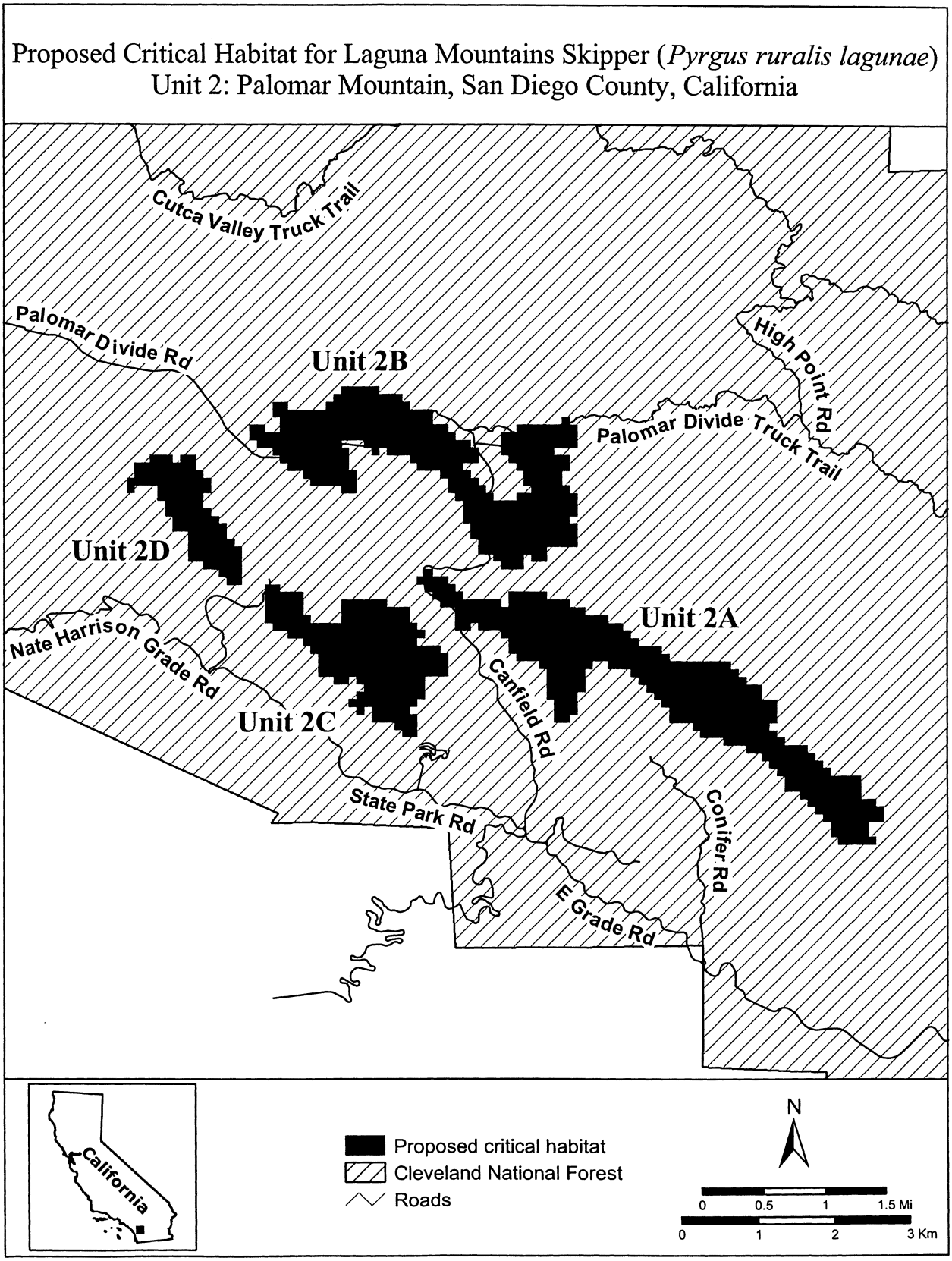
(v) **Note:** Unit 2 (Map 3) follows.



* * * * *

Dated: November 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–23691 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 051129315–5315–01; I.D. 112505A]

RIN 0648–AU07

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS announces that it is considering, and seeking public comment on the implementation of further minimum carapace length (gauge) increases and escape vent size increases in the Federal lobster fishery, consistent with recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). NMFS would issue these regulations according to its authority under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). While a September 2, 2005, proposed rule considered gauge increases and escape vent size increases as scheduled through 2004 in Addenda II and III to Amendment 3 of the ISFMP, the proposed rule did not address; additional gauge increases scheduled annually from 2005 through 2008 in Lobster Conservation Management Areas (LCMA) 3 and the Outer Cape Lobster Conservation Management Area (OCLCMA), an increase to the escape vent size in LCMA 3 and the OCLCMA scheduled for 2008, and an escape vent size increase for LCMA 1 scheduled for 2007. Accordingly, NMFS is seeking written public comments on these additional gauge and escape vent size requirements as set forth in the ISFMP and recommended for Federal implementation by the Commission.

DATES: Comments must be received by January 12, 2006.

ADDRESSES: Written comments should be sent to Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via e-mail to *Lob1205@noaa.gov*, via fax (978) 281–9117 or via the Federal e-Rulemaking portal at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, (978) 281–9144, fax (978) 281–9117, e-mail *peter.burns@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Addenda II through VII are part of an overall lobster fishery management regime set forth in Amendment 3 to the ISFMP. The intent of Amendment 3, approved by the Commission in December 1997, is to achieve a healthy American lobster resource and to develop a management regime that provides for sustained harvest, maintains opportunities for participation, and provides for the cooperative development of conservation measures by all stakeholders. In short, Amendment 3 was envisioned to provide much of the framework upon which future lobster management - to be set forth in later addenda - would be based. In particular, Amendment 3 employed a participatory management approach by creating the seven lobster management areas, each with its own lobster conservation management team (LCMT) comprised of industry members. Amendment 3 tasked the LCMTs with providing recommendations for area-specific management measures to the Commission's Lobster Management Board (Board) to meet the lobster egg production and effort reduction goals of the ISFMP. NMFS has the authority under the ACFCMA to implement regulations in Federal waters that are compatible with the effective implementation of the ISFMP and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act. These Federal regulations are promulgated pursuant to the ACFCMA and are codified at 50 CFR part 697.

Commission Addendum 1 to Amendment 3 focused largely on effort control measures. The Commission approved Addendum 1 in August 1999, with NMFS promulgating compatible regulations on March 27, 2003 (68 FR 14902). The Board approved the egg production measures as Addenda II and III in February 2001, and February 2002, respectively, and recommended that NMFS implement complementary Federal regulations. NMFS began a rulemaking in response to these addenda, and most recently published a proposed rule on September 2, 2005 (70 FR 52346). In December 2003, the Board approved Addendum IV which, in part, included additional egg production measures. Addenda V and VI did not include any further measures pertinent to egg production and, therefore, are not included within the scope of this advance notice of proposed rulemaking (ANPR). Addendum VII, approved by the Board in November 2005, facilitates effort control measures and constitutes a limited access program for the lobster trap fishery in the state waters of LCMA 2 based on historical participation. In approving Addendum VII, the Board opted not to continue with the previously adopted schedule of minimum carapace length increases in LCMA 2 (Addendum III) and voted to maintain the minimum legal carapace length (gauge) at 3 3/8 inches (8.57 centimeters (cm)). This option allows the Board to adjust the minimum gauge size in the future pending new stock assessment results and changes to the plan addenda or amendments.

ISFMP Measures Already Analyzed and Proposed by NMFS

The American lobster egg production and broodstock protection measures in the collective addenda include annual minimum gauge size increases, lobster trap escape vent size increases, maximum carapace size restrictions and v-notch protection. Many of these measures in the collective addenda were already analyzed and proposed for implementation by NMFS in the September 2, 2005, proposed rule. These include: maximum carapace length restrictions for LCMAs 4 and 5; mandatory v-notching of egg-bearing female lobsters in LCMA 1 and the portion of LCMA 3 that lies north of the 42°30′ N. latitude line; a zero tolerance definition of v-notched female lobster in LCMA 1; minimum gauge size increases to 3 3/8 inches (8.57 cm) in LCMAs 2, 3, 4, 5 and the OCLCMA; and lobster trap escape vent size increases to 2 inches X 5 3/4 inches rectangular (5.08 cm X 14.61 cm) and 2 5/8 inches (6.67 cm) diameter circular in LCMAs 2, 3, 4, 5 and the OCLCMA.

Additional minimum gauge increases and escape vent size increases are included in the addenda but were not addressed in the September 2, 2005, proposed rule because the entire gauge increase schedule, although included in the approved Commission addenda, had not actually occurred at the time of analysis for corresponding changes to the Federal rules. In other words, the

proposed rule moves to implement the minimum gauge size and escape vent size for the specified LCMAs as required through 2004 in the addenda, when the Federal analysis of these measures was conducted.

Table 1 illustrates the gauge and vent size schedule set forth in the Commission addenda and provides the corresponding Federal actions that address them.

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Table 1. American Lobster ISFMP Gauge and Escape Vent Schedule and Corresponding Federal Action

[Measurements are in inches]

LCMA	Addenda II-VII		Current Federal Regulations gauge and vent currently consistent in all LCMAs		Proposed Rule Sept. 2005		This ANPR Considers	
	gauge	vent*	gauge	vent*	gauge	vent*	gauge	vent*
Area 1	3 1/4 (no change) 5 max size all lobster	2 X 5 3/4 rectangular or 2 5/8 circular by July 2007	3 1/4 5 max size all lobster	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	No change 5 max size all lobster	No change	No change	2 X 5 3/4 rect. or 2 5/8 circ. by July 2007
Area 2**	3 3/8 July 2004	2 X 5 3/4 rectangular or 2 5/8 circular by 2004	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8	2 X 5 3/4 rect. or 2 5/8 circ.	Not applicable	Not Applicable
Area 3, OCLCMA	3 3/8 July 2004 3 13/32 July 2005 3 7/16 July 2006 3 15/32 July 2007 3 ½ July 2008	2 X 5 3/4 rectangular or 2 5/8 circular by 2004 2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2008	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8	2 X 5 3/4 rect. or 2 5/8 circ.	3 7/16 July 2006 3 15/32 July 2007 3 ½ July 2008	2 1/16 X 5 3/4 rect. or 2 11/16 circ. by 2008
Area 4	3 3/8 July 2004 5 1/4 max size females only by 2002	2 X 5 3/4 rectangular or 2 5/8 circular by 2004	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8 5 1/4 max size female only	2 X 5 3/4 rect. or 2 5/8 circ.	Not applicable	Not applicable
Area 5	3 3/8 July 2004 5 ½ max size all lobsters by 2004	2 X 5 3/4 rectangular or 2 5/8 circular by 2004	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8 5 ½ max size all lobster	2 X 5 3/4 rect. or 2 5/8 circ.	Not applicable	Not applicable

* All vent sizes include a rectangular and corresponding circular vent size. In all cases, each trap is required to have one rectangular vent or two circular vents at the sizes provided.

** Four additional 1/32 gauge increases (up to 3 ½) were initially approved for LCMA 2 in Addendum III, but Addendum VII incorporated a limited access program and capped the gauge at 3 3/8, consistent with NMFS proposed measures.

Scope of This ANPR

The Commission's plan calls for additional management measures that have yet to be proposed or implemented by NMFS. These include four additional 1/32 inch (0.08 cm) gauge increases that would result in a 3 1/2 inch (8.89 cm) minimum gauge size requirement for LCMA 3 and the OCLCMA by July 1, 2008; escape vent size increases in LCMA 3 and the OCLCMA to 2 1/16 inches X 5 3/4 inches rectangular (5.24 cm X 14.61 cm) or two circular vents at 2 11/16 inches diameter (6.83 cm) by July 1, 2008; and an increase to the escape vent size in LCMA 1 to 2 inches X 5 3/4 inches rectangular (5.08 cm X 14.61 cm) or two circular vents at 2 5/8 inches (6.67 cm) in diameter by July 1, 2007. Consequently, NMFS is requesting comments on the need for these additional measures by way of this ANPR.

Other ISFMP Measures Not Considered in This ANPR

The Commission's plan also includes escape vent and gauge increases in LCMA 6 (Long Island Sound). Since this area is comprised entirely of New York and Connecticut state waters, NMFS has no authority to implement measures specific to LCMA 6. However, federally permitted lobster vessels that have New York or Connecticut state licenses are bound to the most restrictive of state and Federal regulations if the Federal permit is endorsed for trap gear in LCMA 6.

The Commission recently passed Addendum VII to the ISFMP that constitutes a limited access lobster trap qualification program based on historical participation. In Addendum VII, the Commission chose to maintain the minimum gauge size at 3 3/8 inches (8.57 cm) indefinitely. Therefore, the minimum gauge size for this area under the Commission's Plan is 3 3/8 inches (8.57 cm) and the escape vent size is 2 inches X 5 3/4 inches (5.08 cm X 14.61 cm) rectangular or two circular vents at 2 5/8 inches (6.67 cm) in diameter. This is consistent with the measures proposed for LCMA 2 in the September 2, 2005, proposed rule. Any future changes to the Federal regulations in LCMA 2, subject to Addendum VII, will be conducted in a separate rulemaking to analyze and seek public comment on the limited access and trap transferability measures set forth for LCMAs 2, 3 and the OCLCMA. NMFS published an ANPR along with a notice of intent in the **Federal Register** on May 10, 2005 (70 FR 24995) to address these lobster fishing effort control measures.

Classification

This ANPR has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: December 7, 2005.

James W. Balsiger,

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

[FR Doc. 05–23984 Filed 12–12–05; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 70, No. 238
Tuesday, December 13, 2005

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

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on January 9 and 10, 2006.

DATES: Monday, January 9, 2006, from 9 a.m. to 5 p.m., and Tuesday, January 10, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Room 6505IR, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 6505IR, 1111 Constitution Avenue, NW., Washington, DC on Monday, January 9, 2006, from 9 a.m. to 5 p.m., and Tuesday, January 10, 2006, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2005 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2006 Basic (EA–1) Examination and the May 2006 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2005 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 10 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and should submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All persons planning to attend the public session should notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2005, to 202–622–8300, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 7, 2005.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. E5–7246 Filed 12–12–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 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 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 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 (OBM), *Pamela_Beverly_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) 720–8681.

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.

Agricultural Marketing Service

Title: Domestic Origin Verification System Questionnaire.

OMB Control Number: O581–NEW.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)) requires and directs the Department to promulgate rules and regulations to carry out voluntary

inspection and grading services on a fee for service basis. The collection of information regarding the requirement for companies to ensure domestic origin of the products they deliver to the USDA Purchase Program is provided for in the ''General Terms and Conditions for Procurement of Agricultural Commodities of Services,'' (USDA–1). The Domestic Origin Verification System Program (DOVS) is a voluntary audit and verification user-fee service available to supplies, processors, and any financially interested party. It is designed to provide validation of the applicant's domestic origin verification system prior to bidding on contracts to supply food products to the Department's Feeding programs, and/or may be conducted after a contract is awarded. Participation in DOVS does not relieve a company of its contractual requirements to provide only domestic origin product to the USDA.

Need and Use of the Information: An interested company requests a DOVS questionnaire, and once completed it contains the applicants procedures to ensure fruit, nut or vegetable components or products can be traced back to their domestic origin; use of a segregation plan to keep all non-domestic components or products separate from domestic products; for taking corrective action on nonconformities and deficiencies; for checking the adequacy of their internal system of ensuring domestic origin; instructing employees in the domestic origin requirement and for maintaining records relating to the applicant's domestic origin verification system. These elements should be place whether or not the applicant is on the DOVS program or providing a trace-back on every contract. DOVS assists companies to meet the domestic origin requirement for the USDA Purchase Program efficiently and eliminates the redundancy of the trace paperwork that is required for every USDA contract.

Description of Respondents: Business or other for-profit.

Number of Respondents: 100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 225.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–23947 Filed 12–12–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 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) 720–8681.

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.

Risk Management Agency

Title: Premium Reduction Plan.

OMB Control Number: 0563–0079.

Summary of Collection: The Federal Crop Insurance Corporation (FCIC) amended the General Administrative Regulations to include provisions regarding the requests by approved insurance providers to implement the premium reduction plan authorized under section 508(e)(3) of the Federal Crop Insurance Act (Act) and the approval of the amount of a premium discount to be provided to farmers under the premium reduction plan. This program allows approved insurance providers to apply to FCIC for authority to reduce the premium charged to producers in accordance with Section 508(e)(3) of the Act, as amended, and to provide limitations and procedures established by FCIC.

Need and Use of the Information: To ensure that the Risk Management Agency (RMA) receives complete revised Plans of Operations complying with twelve requirements from approved insurance providers for the purpose of obtaining approval of premium reduction plans. An approved insurance provider can apply to RMA for authority to reduce premiums payable by producers if the approved insurance provider is able to provide insurance more efficiently than the administrative and operating expense reimbursement paid by RMA. RMA will review the information submitted to determine if the company can actually produce the efficiency required to reduce the premium.

Description of Respondents: Business or other for-profit, farms, Federal Government.

Number of Respondents: 90.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,095.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. E5–7247 Filed 12–12–05; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (CCPAC) will meet on January 12, 2005 in Eureka, California. The purpose of the meeting is to discuss the issues relating to the implementation of the Northwest Forest Plan (NWFP).

DATES: The meeting will be held from 8:30 a.m. to 4 p.m. on January 12, 2006.

ADDRESSES: The meeting will be held at the Six Rivers National Forest Supervisor's Office Conference Room at 1330 Bayshore Way, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National

Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *ichapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The agenda items include: (1) An overview of the PAC and PAC objectives for new members; (2) a report on the April, 2005 NWFP Monitoring Conference; (3) a Regional Ecosystem Office update; (4) a presentation on the Pacific Northwest Aquatic Monitoring Partnership; (5) an update on the Watershed Progress Report; (6) a presentation on the Six Rivers National Forest Business Plan; (7) CCPAC and agency updates; and (8) a discussion of desired topics and dates for upcoming meetings and field trips. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 6, 2005.

Jeff Walter,

Forest Supervisor.

[FR Doc. 05–23952 Filed 12–12–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC34

National Environmental Policy Act Documentation Needed for Oil and Gas Exploration and Development Activities (Categorical Exclusion)

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; request for comment.

SUMMARY: The Forest Service is proposing to amend its directives in Forest Service Handbook 1909.15, Chapter 30, which describes categorical exclusions, that is, categories of actions that will not result in significant impacts on the environment and, therefore, normally do not require further analysis in either an environmental impact assessment or an environmental impact statement. The proposed amendment would add a new categorical exclusion in section 31.2 to facilitate the implementation of limited oil and gas projects on leases on National Forest System lands that do not have significant effects on the human environment. This categorical exclusion will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites. Public comment is invited and will be considered in development of the final directive.

DATES: Comments must be received in writing by February 13, 2005.

ADDRESSES: Send written comments via the U.S. Postal Service to: Oil and Gas CatEx Proposed Directive, C/O Content Analysis Group, P.O. Box 2000, Bountiful, UT 84011–2000, or by facsimile to (801) 397–2601, or by e-mail to *ogcatex@contentanalysisgroup.com*. If comments are sent via facsimile or e-mail, the public is asked not to submit duplicate written comments. Please confine comments to issues pertinent to the proposed directive and explain the reasons for any recommended changes.

All comments, including names, addresses and other contact information when provided, are placed in the record and are available for public review and copying at 5500 West Amelia Earhart Drive, Suite 100, Salt Lake City, Utah, during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call in advance to, Jody Sutton, (801) 517–1032 to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Reta Laford, Ecosystem Management Staff, (202) 205–2936, or Mike Greeley, Minerals and Geology Staff, (703) 605–4785, Forest Service, USDA.

SUPPLEMENTARY INFORMATION:

Need for the Proposed Direction

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 provide that agencies, after notice and comment, may adopt categories of actions that do not have significant impacts on the human environment and, consequently, do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS). Current Forest Service procedures for complying with and implementing the National Environmental Policy Act (NEPA) are set out in Forest Service Handbook (FSH) 1909.15, Chapter 30. This chapter lists the categories of actions that do not require preparation of an EA or an EIS by the Forest Service. The Forest Service calls these categories of action ''categorical exclusions'' (CE). The agency is proposing a new CE for certain limited oil and gas exploration and development activities.

Oil and gas development is widespread throughout the National Forest System (NFS). With the enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, 30 U.S.C. 226 (''FOOGLRA'') both the Secretary of the Interior (acting through the Bureau of Land Management) and the Secretary of Agriculture (acting through the Forest Service) have authority and responsibility regarding oil and gas leases on NFS lands, and both agencies have the authority to determine the stipulations under which leasing will be permitted. 30 U.S.C. 226(h); 43 CFR 3101.7–2(a). FOOGLRA provides that the Forest Service shall regulate all surface disturbing activities relating to oil and gas leasing on NFS lands. 30 U.S.C. 226(g). No permit to drill on NFS lands may be granted without the analysis and approval by the Forest Service of a surface use plan of operations (SUPO) covering proposed surface disturbing activities within the lease area.

The Forest Service has established an incremental decision-making framework for the consideration of oil and gas leasing activities on NFS lands that is set out in 36 CFR 228.102. In general, the various steps undertaken are as follows: (1) Forest Service leasing analysis; (2) Forest Service notification to Bureau of Land Management (BLM) of lands administratively available for leasing; (3) Forest Service review and verification of BLM leasing proposals; (4) BLM assessment of Forest Service conditions of surface occupancy; (5) BLM offers lease; (6) BLM issues lease; (7) Forest Service review and approval of lessee's SUPO; and (8) BLM review and approval of lessee's application for permit to drill (APD). The proposed CE set out in this notice applies exclusively to the Forest Service's review and approval of an applicant's SUPO.

In 2001 President George W. Bush issued Executive Order (E.O.) 13212 to expedite the increased supply and availability of energy to our Nation. E.O. 13212 set forth ''For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.'' In response, the National Energy Policy and the Forest Service Energy Implementation Plan were developed. These two initiatives call for streamlining the processing of APDs and other energy related permits in an environmentally sound manner.

On August 8th 2005, President George W. Bush signed the Energy Policy Act of 2005 into law. Section 390 of the Energy Policy Act of 2005 establishes categorical exclusions under NEPA that apply to five categories of oil and gas exploration and development activities

conducted pursuant to the Mineral Leasing Act (30 U.S.C. et seq., as amended) on Federal oil and gas leases. Section 390 took effect on the date of enactment, August 8, 2005. The categorical exclusion proposed in this notice does not overlap or duplicate the activities proposed in section 390 of the Energy Policy Act of 2005. They are separate and independent of the provisions of section 390 of the Energy Policy Act. Taken in concert, this CE and the five statutory categories discussed above further the President's goals set forth in Executive Order 13212.

For decades the Forest Service has analyzed and administered SUPO for oil and gas exploration and development on NFS lands. As part of the Forest Service Energy Implementation Plan process, the planning and environmental review process was reviewed by field personnel who indicated that the USFS and BLM land and resource management planning process, leasing process, and SUPO and APD review processes for oil and gas exploration and development frequently caused agency personnel to extend timelines and expend undue energy and funding in order to complete the planning and environmental documentation for minor exploration and/or development projects. The Deputy Chief of the NFS requested field units to monitor oil and gas exploration and development projects that had been analyzed in an EA, and were approved and constructed, or partially constructed, between October 1, 1999 and September 30, 2004. The objective of the review was to determine if surface operations for oil and gas activities approved in site-specific EAs did or did not have cumulatively significant effects on the human environment and therefore could or could not qualify for a CE. The results of this analysis are set out to under ''Rationale for the Proposal.''

Based on this review and the agency's extensive experience with oil and gas exploration and development activities including the construction of well sites, pipelines and roads and road reconstruction, the Forest Service proposes to add a new CE to its Environmental Policy and Procedures Handbook (FSH 1909.15). This category would appear in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, and would provide a specific, narrow CE for oil and gas exploration and/or development.

Description of the Proposed New Categorical Exclusion

The proposed CE would allow oil and natural gas exploration and/or development activities within a new oil and/or gas field not to exceed a total of: (a) One mile of new road construction; (b) one mile of road reconstruction; (c) three miles of pipeline installation; and (d) four drill sites. A drill site may include more than one well in order to reduce surface disturbance. The category would only apply to activities on NFS lands that are under Federal lease and when there are no extraordinary circumstances. Following is a hypothetical example of how the CE could be applied on NFS land.

A Responsible Official approves the construction of one exploration drill site and .5 miles of road construction within a new field using the proposed CE where no extraordinary circumstances are involved. The exploration well is a ''strike'' and is capable of production. The Responsible Official could appropriately use the proposed CE to subsequently approve the construction of another exploration drill site, involving .5 miles of road reconstruction and .2 miles of road construction. The second exploration well is also a strike and it is determined that both exploration wells are in the same oil or gas field. The Responsible Official could use the proposed CE when approving development of a drill site involving .5 miles of road reconstruction and .2 miles of road construction in the same field. At this point, 3 drill sites, .9 miles of road construction and one mile of road reconstruction have been approved in the field. If a lessee submits an APD and SUPO for construction of another development drill site and one-half mile of road construction in the same field, the total miles of road construction allowable under the category would be exceeded for the field, the proposed CE could no longer be available for such a proposal, and the direct and cumulative effects of additional field development should be considered in an EA or EIS.

Note that when exploration wells are drilled, they are not yet associated with a particular field. However, if an exploration well is determined to be capable of production, it then can be associated with a field (determined by the BLM) and for purposes of the proposed CE, all exploration activities that occurred within the field and subsequent development activities would be chargeable under the category.

There is potential that new oil and gas fields could be located adjacent to existing developed fields. States delineate fields, in coordination with the BLM, within their boundaries. Fields are areas consisting two or more producing wells in an oil or gas reservoir or reservoirs related to the same individual geological structural feature. Such reservoirs may be interconnected or separated. In such cases, concerns over identifying environmental effects resulting from activities on the adjacent fields would be addressed through the following two methods. First, before NFS lands are offered for lease, a leasing analysis is conducted that evaluates potential environmental consequences resulting from field development. On NFS Lands, this leasing analysis is conducted by the Forest Service in cooperation with the BLM. Second, an extraordinary circumstances review identified in Forest Service Handbook 1909.15, Chapter 30 would be conducted for a particular leasing proposal implementing the proposed CE. It is the degree of the potential effect of the proposed action on these resource conditions, which determines whether extraordinary circumstances exist.

Rationale for the Proposal

As previously stated, the Deputy Chief for the NFS requested field units to monitor oil and gas exploration and development projects assessed in an EA and approved and constructed, or partially constructed, between October 1, 1999 and September 30, 2004. In response, field units collected data on 73 projects.

The scope of the proposed new category is consistent with the scope of the 73 projects examined in the 2005 review, each of which had no significant environmental effects. The agency believes the level of effects associated with future activities within the proposed new category would also be below the level of significant environmental effects.

In addition to reviewing the 73 oil and gas exploration and development projects a review of the analyses supporting oil and gas leasing was also performed. A sample of land and resource management plans for National Forests and Grasslands and leasing EIS decisions, where future oil and gas field development is anticipated, was reviewed. The review found that when future activities were expected to have a significant environmental effect or would be incompatible with other forest or grassland uses, such areas had been identified as not suitable and exploration or development had been prohibited. Furthermore, the use of best management practices such as class III archeological surveys, or biological

surveys, resulted in avoidance or mitigation as necessary, and contributed to the defined category of oil and gas activities having no significant environmental impacts.

The proposed CE will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites.

It is important to note that CEs do not allow a Responsible Officials to forgo scoping. The CEQ regulations at 40 CFR 1501.7 define scoping as a process for determining the scope of issues to be addressed and for identifying significant issues to be documented in an EIS. The Forest Service conducts scoping on all proposed actions, including those covered by CEs. Guidance to Forest Service employees in FSH 1909.15, Chapter 10 provides that interested and affected agencies and citizens may be invited to participate in the scoping process and further states in Chapter 11 that in determining whether a proposed action can be categorically excluded, the Responsible Official must consider: (1) The nature of the proposal; (2) preliminary issues; (3) interested and affected agencies, organizations, and individuals, and; (4) the extent of existing documentation. Furthermore CEs do not absolve the Responsible Official from conducting appropriate consultations with Federal and state regulatory agencies such as those required by the Endangered Species Act and the National Historic Preservation Act. Any activities authorized using the proposed CE must meet all applicable Federal, state, and local laws, as well as land and resource management plan standards and guidelines.

Description of the Leasing Process

The Department of the Interior, Bureau of Land Management (BLM), acts as the onshore leasing agent for the federal government. The BLM schedules and conducts competitive bid lease sales, collects the bonus bids and issues leases to the successful bidders. As a land management agency, the Forest Service decides whether or not lands will be available for leasing, and under what conditions (stipulations) the leases will be issued. Forest Service decisions about leasing are made in conjunction with approved forest or grassland and resource management plans, as well as in separate forest-wide or area-specific leasing decisions. Land management plan oil and gas leasing availability decisions are made in compliance with the National Environmental Policy Act as well as other laws such as the Endangered Species Act and the National Historic Preservation Act, and includes public notice and opportunity for comment. The BLM is an official cooperator in these efforts.

The Energy Policy and Conservation Act (EPCA) directed the BLM, in cooperation with the Forest Service, to summarize Forest Service and BLM plan leasing decisions. In two phases, the highest potential onshore geologic basins were studied. The studies show that for the NFS lands studied 47% are off-limits to any surface exploration or development (due to legal and administrative withdrawal, a ''no leasing'' decision or a ''no surface occupancy'' lease), 19% are available to exploration and development under standard lease terms and restrictions, and 34% are subject to additional restrictions beyond the standard lease terms and restrictions for additional protection of other forest or grassland resources or uses. The study shows that oil and gas exploration or development activity is not allowed or is restricted where such activity would have a significant environmental effect or be incompatible with other forest or grasslands uses or management schemes. The screening that occurs at the leasing decision stage contributes significantly to the findings of no significant environmental impacts of the 73 projects studied.

Description of the Process and Best Management Practices for Approving Exploration or Development of a Lease

For oil and gas exploration and development on NFS lands there is an element of overlap in the implementation of Best Management Practices (BMPs) and mitigation measures. There may be additional environmental protections added at each stage. This overlap occurs as environmental protections are added at multiple scales of implementation, including: (1) During the land management planning process the agency considers the overall multiple uses of its renewable resources while maintaining the long-term productivity of the land. Resources are managed so they are utilized in a combination that will best meet the needs of the American people and maintain or restore the health of the land to provide a sustainable flow of uses, benefits, products, services and visitor opportunities; (2) The leasing process developed through the land management planning process or separately evaluates those areas that will be: (a) open to development subject to the terms and conditions of the standard oil and gas lease form; (b) open to development but subject to constraints that will require the use of lease stipulations; and (c) closed to leasing, distinguishing between those areas that are being closed through exercise of management direction, and those closed by law, regulation, etc.; (3) Individual NEPA analysis on the SUPO, a component of the APDs, includes site-specific BMP and mitigations measures, and; (4) Implementation monitoring then occurs and informs future development of BMPs, mitigation measures or standard stipulations.

For the 19% of the NFS lands subject to standard lease terms (as well as 34% with lease restrictions), a permit must be obtained and best management practices followed. Federal oil and gas leases have extensive requirements for environmental protection. Oil and gas exploration and development must comply with the Secretary of Agriculture's rules and regulations for use and occupancy of NFS lands and with additional environmental protections developed specifically for oil and gas exploration and development in Forest Service regulations 36 CFR part 228 subpart E, BLM regulations 43 CFR part 3100, and Onshore Oil and Gas Orders. For example, under Forest Service regulations 36 CFR 228.108(d) operators are required to report findings of cultural and historical resources to the authorized Forest officer immediately. Under BLM regulations 43 CFR part 3100 environmental protection is guided, in part, through the requirements of surety bonding required to be submitted by operators. BLM Onshore Oil and Gas Order #1, which has been adopted by the Forest Service, furthers these environmental protection measures by requiring an on-site review of every proposed ADP for the purpose of identifying resource concerns.

Oil and gas exploration and development must also be consistent with the land management plan direction (forest or grassland land management plans) including any current and applicable standards and guidelines developed under the 1982 planning rule and continuing under the 2005 planning rule..

Lessees are required to conduct operations in a manner that minimizes adverse impacts to the land, air, and water, to cultural, biological, visual, and other resources through such measures as modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. Current best management practices include site specific historic or cultural, botany and

wildlife surveys. National Pollutant Discharge Elimination System (NPDES) permits must be obtained from the state, and air quality standards met. The review of the 73 projects demonstrated repeatedly that projects are moved, delayed or changed to successfully avoid environmental impacts.

It is the conclusion of the agency that the combination of agency leasing decisions, forest or grassland land management plan standards and guidelines, best management practices, and current laws and regulations reduce the potential environmental effects for certain oil and gas activity to insignificance. The limited scope of the proposed CE leads the agency to conclude that implementation of the proposed category would not result in individually or cumulatively significant effects on the human environment. This proposed CE applies exclusively to the Forest Service's review and approval of an applicant's SUPO and does not eliminate the environmental analysis requirement for the leasing decision.

Regulatory Certifications

Environmental Impact

The proposed revision to Forest Service Handbook 1909.15 would add direction to guide field employees in the USDA Forest Service regarding requirements for NEPA documentation for particular oil and gas exploration and development activities. The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), aff'd, 230 F. 3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, OMB has reviewed this proposed interim directive.

The primary economic effects of the proposed CE for oil and gas leases are changes in costs of conducting environmental analysis and preparing NEPA documents. The proposed categorical exclusion would reduce agency costs by reducing the documentation requirements for certain oil and gas exploration and development on NFS land under existing Federal leases.

Effects on local economies and small business entities are expected to be nearly the same using either an EA or CE for oil and gas exploration and development activities. There is potential for an increase in certain oil and gas exploration and development projects and increase in site administration since they would be faster and cheaper to prepare.

Total undiscounted costs for CEs were estimated at $8 million with an annual average cost of $0.8 million, while the undiscounted cost for EAs for the same timeframe would be $48 million with an annual average cost of $4.8 million. There is an annual average cost saving of $4 million for the proposed CE. A comparison of the discounted costs also shows the same direction of cost saving for CEs over EAs. An annual average saving of discounted cost of $3 million for CEs is estimated. This quantitative assessment indicates a cost savings for using CEs for oil and gas exploration and development projects for the agency.

A civil rights impact analysis was prepared for the proposed CE. No potential impacts are identified for groups of people who fall within the scope of Civil Rights legislation or the Executive Order on Environmental Justice (E.O. 12898).

Federalism

The agency has considered this proposed directive under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), ''Federalism.'' The agency has made an assessment that the proposed directive conforms with the Federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the agency concludes that the proposed directive does not have Federalism implications.

Consultation and Coordination With Indian Tribal Governments

This proposed directive has been reviewed under E.O. 13175 of November 6, 2000, ''Consultation and Coordination With Indian Tribal Governments.'' This proposed directive 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. Nor does this proposed directive impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, it has been determined that this proposed directive does not have tribal implications requiring advance consultation with Indian tribes.

No Takings Implications

This proposed directive has been analyzed in accordance with the principles and criteria contained in E.O. 12630 on Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed directive does not pose the risk of a taking of Constitutionally protected private property.

Energy Effects

This proposed directive has been reviewed under E.O. 13211 on Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed directive does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This proposed directive does not contain any additional recordkeeping or reporting requirements associated with onshore oil and gas exploration and development or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: December 5, 2005.

Dale N. Bosworth,

Chief.

Text of Proposed Directive

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only the section of the FSH 1909.15, Environmental Policy and Procedures Handbook, affected by this proposed directive is included in this notice. Please note, however, that category 15 (para. 16) is reserved. A notice for comment was published for category 16 on January 5, 2005 (70 FR 1062). A final directive for this CE has not been adopted as of the date of publication of this **Federal Register** notice. The complete text of FSH 1909.15, Chapter 30 may obtained by contacting the individuals listed in **FOR FURTHER INFORMATION CONTACT** or from the Forest Service home page on the World Wide Web at *http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15,30.txt.* The intended audience for this direction is Forest Service employees charged with planning and administering oil and gas exploration and development projects on NFS lands under Federal lease.

FSH 1909.15—Environmental Policy and Procedures Handbook Chapter 30—Categorical Exclusion from Documentation

Add new paragraphs 16 and 17 as follows:

31.2—Categories of Action for Which a Project or Case File and Decision Memo Are Required

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as: The names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo (sec. 05); and a list of the people notified of the decision. Maintain a project or case file and prepare a decision memo for any of the categories of actions set forth in section 21.21 through 31.23.

* * * * *

16. [Reserved]

17. Approval of a Surface Use Plan of Operations for oil and natural gas exploration or development activities within a new oil and/or gas field, so long as the approval will not authorize activities in excess of any of the following:

a. One mile of new road construction
b. One mile of road reconstruction
c. Three miles of pipeline installation
d. Four drill sites.

[FR Doc. 05–23983 Filed 12–12–05; 8:45 am]

BILLING CODE 3410–11–P

AMERICAN BATTLE MONUMENTS COMMISSION

SES Performance Review Board

AGENCY: American Battle Monuments Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the ABMC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, Telephone Number: (703) 696–6908. American Battle Monuments Commission SES Performance Review Board Mr. Gerald W. Barnes, Chief, Operations Division, U.S. Army Corps of Engineers Mr. Donald L. Basham, Chief, Engineering & Construction, U.S. Army Corps of Engineers Mr. Stephen Coakley, Director of Resource Management, US Army Corps of Engineers

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. E5–7257 Filed 12–12–05; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–810

Stainless Steel Bar from India: Notice of Court Decision Not in Harmony and Continuation of Suspension of Liquidation

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

SUMMARY: On October 20, 2005, in *Slater Steels Corp. v. United States*, Consol. Court No. 02–00551, Slip Op. 05–137 (CIT October 20, 2005) (''*Slater III*''), a lawsuit challenging the Department of Commerce's (''the Department'') *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 67 FR 53336 (August 15, 2002) (''*Final Results*'') and the accompanying Issues and Decision Memorandum (July 5, 2002) (''*Decision Memorandum*''), the Court of International Trade (''CIT'') affirmed the Department's third remand determination and entered a judgment order. In the remand determination, the Department did not collapse Viraj Alloys Limited (''VAL'') with Viraj Impoexpo Limited (''VIL'') and Viraj Forgings Limited (''VFL''). The Department calculated an individual antidumping duty margin for VIL/VFL. The Department did not calculate an individual antidumping duty margin for VAL because it did not export the subject merchandise to the United States during the period of review. The resulting antidumping duty margin for VIL/VFL is 0.84 percent.

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''Timken''), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs and Border Protection (''CBP'') to liquidate all relevant entries of subject merchandise for VIL/VFL.

EFFECTIVE DATE: October 30, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Williams, AD/CVD Enforcement Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4619.

SUPPLEMENTARY INFORMATION:

Background

In the underlying administrative review covering the period February 1, 2000, though January 31, 2001, the Department collapsed VAL, VIL, and VFL pursuant to 19 USC § 1677(33) and 19 CFR § 351.401(f) (2000). *See Final Results; see also Decision Memorandum* at Comment 1. As a collapsed entity, VAL/VIL/VFL received a *de minimis* dumping margin.

Based upon the record evidence, the Department found that VAL, VIL, and VFL ''meet the regulations' collapsing requirements.'' Decision Memorandum at Comment 1. First, the Department found that ''VAL and VIL can produce subject merchandise (*i.e.*, similar or identical products) and can continue to do so, independently or under existing leasing agreements, without substantial

retooling of their production facilities.'' Id. Second, the Department found ''a significant potential for the manipulation of price and production among VIL, VAL, and VFL.'' *Id.* Slater Steels Corporation, Carpenter Technology Corporation, Electralloy Corporation, and Crucible Specialty Metals Division of Crucible Materials Corporation (collectively, the ''plaintiffs''/''defendant–intervenors'') challenged this determination before the CIT, arguing that the Department misapplied its collapsing regulation.

The CIT determined that the Department's decision to collapse VAL, VIL, and VFL was not supported by substantial evidence on the record. Therefore, the CIT remanded the *Final Results* to the Department to reconsider its analysis of the collapsing issue and, if necessary, revise the dumping margin calculation accordingly. *See Slater Steels Corp. v. United States*, 279 F. Supp. 2d 1370 (CIT August 21, 2003) (''*Slater I*''). Pursuant to the CIT's order in Slater I, the Department filed its *Final Results of Redetermination Pursuant to Remand* (''*Remand I*''). In Remand I, the Department determined that its decision to collapse VAL, VIL, and VFL was supported by substantial evidence and in accordance with the law, and therefore, the Department did not revise its dumping margin calculations.

Upon review of *Remand I*, the CIT again remanded the *Final Results* to the Department for further review of its collapsing determination, citing certain issues for the Department to reexamine. *See Slater Steels Corp. v. United States*, Court No. 02–00551, Slip Op. 04–22 (CIT March 8, 2004) (''*Slater II*''). In response to the CIT's instructions in *Slater II*, the Department filed its *Final Results of Redetermination Pursuant to Remand (''Remand II'')*. In *Remand II*, the Department addressed the concerns raised by the CIT in *Slater II* and found that the decision to collapse VAL, VIL, and VFL was supported by substantial evidence and in accordance with the law, and therefore, the Department did not revise its dumping margin calculations.

Upon review of *Remand II*, the CIT again remanded the *Final Results* to the Department with specific instructions that the Department calculate individual dumping margins. *See Slater III* Slip Op. 05–137 at 15. The CIT found that the Department's decision to collapse VAL, VIL, and VFL in the *Final Results* was not consistent with the Department's decision not to collapse VAL, VIL, and VFL in previous reviews. *See Slater III* Slip Op. 05–137 at 15. In *Final Results of Redetermination Pursuant to Remand* (''*Remand III*''), the Department did not collapse VAL with VIL/VFL. *See Remand III* at 5–6. The Department collapsed VIL and VFL because the plaintiffs agreed in the underlying review that VIL and VFL should be collapsed. *See Remand III* at 5. VIL/VFL's resulting antidumping duty margin is 0.84 percent. *Id.* at 26. The CIT affirmed the Department's Remand III on October 20, 2005. *See Slater III* Slip Op. 05–137 at 4–5.

Suspension of Liquidation

The Federal Circuit, in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's *Final Results*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's October 20, 2005, decision or, if that decision is appealed, pending a final decision by the Federal Circuit.

The Department will instruct CBP to liquidate relevant entries covering the subject merchandise, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit.

Dated: December 7, 2005.

Joesph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7275 Filed 12–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan

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

SUMMARY: On July 11, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the order on certain stainless steel butt–weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 70 FR 39735 (July 11, 2005) (''*Preliminary Results*''). This review covers two manufacturers/exporters of the subject merchandise. The merchandise covered by this order is certain stainless steel butt–weld pipe fittings from Taiwan as described in the ''Scope of the Order'' section of this notice. The period of review (''POR'') is June 1, 2003, through May 31, 2004. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we made changes to the margin calculation for one respondent. Therefore, the final results have changed from the preliminary results of this review. The final weight–averaged dumping margin is listed below in the section titled ''Final Results of the Review.''

EFFECTIVE DATE: December 13, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Abdelali Elouaradia, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0405 and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 11, 2005. *See Preliminary Results.* We invited parties to comment on the *Preliminary Results*. We received written comments on August 10, 2005, from Flowline Division of Markovitz Enterprise, Inc., Shaw Allow Piping Products, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc., collectively, ''the petitioners.'' On August 15, 2005, we received rebuttal comments from Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') and its wholly owned U.S. subsidiary Ta Chen International, Inc. (''TCI''). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products subject to this order are certain stainless steel butt–weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt–weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the

piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system. Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Partial Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng'') and PFP Taiwan Co., Ltd. (''PFP'') because we found that both had no entries of subject merchandise during the POR. *See Preliminary Results* at 39737. The Department received no comments on this issue and we continue to find that rescission of the review of Liang Feng and PFP is appropriate. Therefore, the Department is rescinding the review with respect to Liang Feng and PFP.

Duty Absorption

In these final results, we continue to find duty absorption because Ta Chen and Tru–Flow provided no evidence on the record showing that their unaffiliated purchasers will pay the full duty ultimately assessed on the subject merchandise. (*See Preliminary Results* at 39737, 39738.)

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Stainless Steel Butt–Weld Pipe Fittings from Taiwan (''Decision Memorandum''), dated December 6, 2005, which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the Decision Memorandum, is appended to this notice. The Decision Memorandum is on file in the Central Records Unit in room B–099 of the main Commerce building, and can also be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made a correction to direct selling expenses, by including the expenses reported in the field REPACKU in the calculation of U.S. direct selling expenses. *See* the Decision Memorandum at Comment 5.

Final Results of Review

As a result of our review, we determine that the following weighted–average margins exists for the period June 1, 2003, through May 31, 2004:

Manufacturer/Exporter	Weighted-Average Margin (Percentage)
Ta Chen Stainless Pipe Co., Ltd	2.32
Tru–Flow Industrial Co., Ltd	152.40

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise produced by Ta Chen and Tru–Flow. Antidumping duties for the rescinded companies, Liang Feng and PFP, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of stainless steel butt–weld pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) For the companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company–specific rate from the most recent review; (3) if the exporter is not a firm covered in this review, a prior review, or the investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 51.01 percent, the ''All Others'' rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

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 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 duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix — Issues in Decision Memorandum

ISSUES RELATING TO TA CHEN

Comment 1: Affiliations
Comment 2: CEP Offset

Comment 3: Date of Sale
Comment 4: U.S. Inventory Carrying Costs

Comment 5: Repacking Expenses
Comment 6: Bonuses and Cost of Production

ISSUES RELATING TO TRU–FLOW

Comment 7: Sales by Other Companies of Fittings Produced by Tru–Flow

[FR Doc. E5–7278 Filed 12–12–05; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–428–825)

Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 8, 2005, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order covering stainless steel sheet and strip in coils from Germany. *See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 45682 (August 8, 2005) (*Preliminary Results*). The merchandise covered by this order is stainless steel sheet and strip in coils as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is July 1, 2003 through June 30, 2004. We invited parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: December 13, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Scott, Tyler Weinhold, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657, (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the Department of Commerce published the preliminary results of administrative review of the antidumping order covering stainless steel sheet and strip in coils from Germany. See Preliminary Results. In the Preliminary Results we invited parties to provide comments. In response, the Department received case briefs from ThyssenKrupp Nirosta GmbH, ThyssenKrupp VDM GmbH (TKVDM), ThyssenKrupp Nirosta Präzisionsband GmbH (TKNP), and their various affiliates (collectively, TKN) and from Allegheny Ludlum, North American Stainless, Local 3303 United Auto Workers, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization (collectively, Petitioners) on September 7, 2005. Petitioners submitted a rebuttal brief on September 14, 2005. TKN did not submit a rebuttal brief.

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81 [1], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [6]

Analysis of Comments Received

All issues raised by parties in the case briefs and in Petitioners' rebuttal brief to this administrative review are addressed in the Issues and Decision Memorandum from Stephen Claeys, Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration (Decision Memorandum), dated December 6, 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 Memorandum, is attached to this notice as an appendix. The Decision Memorandum is on file in room B–099 of the main Department of Commerce 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 Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes to the margin calculation. The changes are listed below:

- We have calculated home market early payment discounts and rebates on a concern (*i.e.*, affiliated–family grouping) basis rather than on the basis of individual customers, where applicable.
- We have disregarded from our analysis all home market sales by Nirosta Service Center (NSC) that were coded as sales of non–prime merchandise.
- For the preliminary results, certain cost of production (COP) data had been inadvertently eliminated from our analysis, thereby causing

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

certain U.S. sales to be excluded from our analysis since they had no matching cost data. Therefore, for these final results we inserted programming language to maintain these COP data in our analysis.

- We corrected the data in the grade field for certain home market observations that had been coded incorrectly.

Final Results of the Review

We determine the following percentage weighted–average margin exists for the period July 1, 2003, through June 30, 2004:

Manufacturer/Exporter	Weighted Average Margin (percentage)
TKN	9.50

Assessment

The Department shall determine, and U.S. Bureau of Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), 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 0.5 percent), we will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. To determine whether the duty–assessment rate covering the period is *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated an importer–specific assessment ad valorem rate by aggregating the dumping margins calculated for all U.S. sales to each customer or importer and dividing this amount by the total quantity sold to that customer or importer. Where the importer–specific *ad valorem* rate is greater than *de minimis*, and where the respondent has reported reliable entered values, we instruct CBP to apply the assessment rate to the entered value of the importer's entries during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

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 stainless steel sheet and strip in coils from Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff 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 13.48 percent. This rate is the ''All Others'' rate from the amended final determination in the LTFV investigation of stainless steel sheet and strip in coils from Germany. *See Stainless Steel Sheet and Strip in Coils From Germany: Amended Final Determination of Antidumping Duty Investigation*, 67 FR 15178, 15179 (March 29, 2002).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement

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.

Notification Regarding Administrative Protective Orders

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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: December 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Whether to Split Gauge Group 70
2. Calculation of Interest Expense
3. Home Market Rebates and Early Payment Discounts
4. Distinguishing between Prime and Non–Prime Sales in Conducting the Cost Test
5. Treatment of Non–Dumped Sales
6. Reclassification of Non–Prime Products
7. Dropped U.S. Sales
8. Misclassified Grades

[FR Doc. E5–7281 Filed 12–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No.: 84–16A12.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Northwest Fruit Exporters (''NFE'') on December 2, 2005. The Certificate has been amended fifteen times. The most recent previous amendment was issued to NFE on October 14, 2004, and published in the **Federal Register** on October 21, 2004 (69 FR 61802). The original Export Trade Certificate of Review No. 84–00012 was issued to NFE on June 11, 1984, and published in the **Federal Register** on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department

of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Bolinger & Sons, Wenatchee, WA; C&M Fruit Packers, Wenatchee, WA; Cascade Fresh Fruits, L.L.C., Manson, WA; AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA; Nuchief Sales Inc., Wenatchee, WA; Orchard View Farms, Inc., The Dalles, OR; SST Growers and Packers L.L.C., Granger, WA; Voelker Fruit and Cold Storage, Yakima, WA; and Yakima-Roche Fruit Sales, L.L.C., Yakima, WA; and

2. Delete the following companies as ''Members'' of the Certificate: Fox Orchards, Mattawa, WA; Magi, Inc., Brewster, WA (as a result of a merger with Chelan Fruit Cooperative, a Member of NFE); Monson Fruit Co., Selah, WA (for its cherry operation, only); Rawland F. Taplett dba R.F. Taplett Fruit & Cold Storage Co., Wenatchee, WA; Sund-Roy L.L.C., Yakima, WA; and Washington Export, L.L.C., Yakima, WA.

The effective date of the amended certificate is September 6, 2005. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 7, 2005.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E5–7273 Filed 12–12–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102204A]

Small Takes of Marine Mammals Incidental to Specified Activities; Black Abalone Research Surveys at San Nicolas Island, Ventura County, CA

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Glenn R. VanBlaricom (VanBlaricom) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA.

DATES: Effective from November 30, 2005, through November 29, 2006.

ADDRESSES: A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and sets forth the permissible methods of taking and other means of effecting the least practicable impact on the species and stock or habitat (i.e., mitigation measures) and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorization for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On August 31, 2004, NMFS received a letter from Glenn R. VanBlaricom, Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting renewal of an IHA that was first issued to him on September 23, 2003 (68 FR 57427, October 3, 2003) for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends in black abalone (Haliotis

cracherodii) populations at SNI, Ventura County, California, over time in permanent study sites. Population trend data for black abalone populations have become important in a conservation context because of: a) the reintroduction of sea otters to SNI in 1987, raising the possibility of conflict between otter conservation and abalone populations (abalones are often significant prey for sea otters); b) the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, resulting in dramatically increased rates of abalone mortality at the Island; and c) the recent designation of California populations of black abalones as a species of concern in the context of listing pursuant to the Endangered Species Act (ESA). Research is done under the auspices of the Washington Cooperative Fish and Wildlife Research Unit, the University of Washington, and the U.S. Navy (owner of SNI), with additional logistical support from the University of California, Santa Cruz. Since the abalone are not handled or removed in the course of the research, neither a state nor federal permit is needed.

Additional information on the research is contained in the application and proposed IHA **Federal Register** notice (69 FR 70249), which are available upon request (see **ADDRESSES**).

Project Description

Nine permanent research study areas are located in rocky intertidal habitats on SNI in Ventura County, CA. The applicant has made 101 separate field trips to SNI from September 1979 through June 2005, participating in abalone survey work on 534 different days at nine permanent study sites. Quantitative abalone surveys on SNI began in 1981, at which point permanent research sites were chosen based on the presence of dense patches of abalone in order to monitor changes over time in dense abalone aggregations. Research is conducted by counting black abalone in plots of 1 m^2 (3.3^2 ft) along permanent transect lines in rocky intertidal habitats at each of the nine study sites on the island. Permanent transect lines are demarcated by stainless steel eyebolts embedded in the rock substrata and secured with marine epoxy compound. Lines are placed temporarily between bolts during surveys and are removed once surveys are completed. Survey work is done by two field biologists working on foot; therefore, monitoring of black abalone populations at SNI can be done only during periods of extreme low tides. The exact date of a visit to any given site is difficult to predict because variation in surf height and sea conditions can influence the safety of field biologists as well as the quality of data collected. In most years survey work is done during the months of January, February, March, July, November, and December because of optimal availability of low tides. All work is done only during daylight hours because of safety considerations.

Research is expected to extend over a period of 2 more years, from November 30, 2005 through 2007, with additional work in future years remaining a possibility pending funding and staff. Surveys of abalones will be conducted each year during this year period. During each survey year, each of the nine permanent study sites at SNI will be visited three times. Abalone surveys, which take no more than 4 hours at each site, are conducted during two of the three visits to each of the nine sites. A third maintenance visit, which takes less than half of an hour at each site, is used to take measurements and make necessary repairs to plots and is conducted in a month when smaller numbers of pinnipeds are present.

The affected marine mammal populations at SNI, especially California sea lions and northern elephant seals, have grown substantially since the beginning of abalone research in 1979 and have occupied an expanded distribution on the island due to population growth. Sites previously accessible with no risk of marine mammal harassment are now being utilized by marine mammals at levels such that approach without the possibility of harassment is difficult. Of the nine study sites used for the abalone surveys, only two sites can be occupied without the possibility of disturbing at least one species of pinniped; therefore, an IHA is warranted.

Comments and Responses

A notice of receipt of Dr. VanBlaricom's application for an IHA renewal and proposed IHA was published in the **Federal Register** on December 3, 2004 (69 FR 70249). During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission) and one member of the public.

Comment 1: The Commission concurs with NMFS' preliminary determination that, given the mitigation measures proposed by the applicant, the proposed research activities are likely to result in no more than the temporary modification of behavior by California sea lions, Pacific harbor seals, and northern elephant seals. The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the applicant's monitoring program is sufficient to detect the effects of the proposed research activities, including any mortality and/or serious injury that results from startle responses, or stampedes. The Commission notes, however, that although the proposed mitigation measures are expected to reduce the possibility of injury or death of animals, the potential for such taking remains. Consequently, the Commission recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a marine mammal occurs which appears to be related to the abalone research, further research activities be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or until such taking can be authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

Response: NMFS appreciates the Commission's concurrence with our determination. NMFS believes that the applicant's monitoring program is sufficient to detect the effects of his proposed research activities. Further, NMFS believes it highly unlikely that injury or mortality of a marine mammal would occur as a result of the proposed abalone research. The only way injury or mortality could occur as a result of the proposed research is if the approach of researchers caused pinniped mothers to either trample or become separated from their pups. Mitigation measures required in the IHA include time of year restrictions that avoid researcher interactions with California sea lion or Pacific harbor seal pups. Though elephant seal pups are sometimes present at abalone surveys, elephant seals are far less reactive to researcher presence than the other two species, researchers use great care approaching sites (and because elephants seals pup on the sand and permanent study sites are on rocks the two are always separated by at least 50 m (164 ft)), and only 16 total (adult) elephant seals have been disturbed in the last two years (of 971 present). However, as suggested, we have added language to the IHA requiring that VanBlaricom suspend research activities and contact NMFS immediately should an injury or mortality of a marine mammal be suspected of resulting from the abalone research.

Comment 2: One individual expressed concerns about many people doing research and all of them resulting in the death of wildlife. This individual further questioned the applicant's need to continue doing research he has already been conducting for many years.

Response: The taking by serious injury or death of any marine mammal is not authorized by this IHA and would result in the modification, suspension or revocation of this Authorization. NMFS anticipates that Glenn VanBlaricom's black abalone surveys will result in no more than Level B Harassment that is limited to short term and localized behavioral changes, such as startle reactions or flushes of low numbers of individuals from haul-out sites.

Multi-year surveys are necessary to assess population trends. However, the IHA that NMFS is issuing does not authorize the applicant's black abalone research itself, but the incidental taking by harassment of small numbers of marine mammals of a species or population stock by the applicant while engaging in that activity.

Description of Habitat and Marine Mammals Affected by the Activity

San Nicolas is one of the eight Channel Islands, located in the Santa Barbara Channel off Southern California. Nine miles long and about three and a half miles across at its widest point, it is the farthest island from the mainland, more than 60 miles (96.6 km) offshore and about 85 miles (136.8 km) southwest of Los Angeles, California. SNI is owned and operated by the U.S. Navy and is off-limits to civilians without specific permission.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds. On SNI, three pinniped species (northern elephant seal, Pacific harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition, a single adult male Guadalupe fur seal (*Arctocephalus townsendi*) was seen at one abalone research site on two occasions during the summer months in the mid–1980's; however, there have been no sightings of this species on the island since then.

Further information on the biology and distribution of these species and others in the region can be found in Dr. VanBlaricom's application, which is available upon request (see **ADDRESSES**), and the Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/individual_sars.html*.

California Sea Lions

The U.S. stock of California sea lions extends from the U.S./Mexico border north into Canada. Breeding areas of the sea lion are on islands located in southern California, western Baja California, and the Gulf of California and they primarily use the central California area to feed during the non-breeding season. Population estimates for the U.S. stock of California sea lions, which are based on counts conducted in 2001 and extrapolations from the number of pups, range from a minimum of 138,881 to an average of 244,000 animals, with a current growth rate of 5.4 to 6.1 percent per year (Carretta et al., 2005). The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted under the MMPA.

California sea lions haul out at many sites on SNI and are by far the most common pinniped on the island. Over the course of a year, up to 100,000 sea lions may use SNI. Numbers of sea lions at SNI increased by about 21% per year between 1983 and 1995 (NMFS, 2003) and sea lions have recently started occupying areas that were not formerly used. Pupping occurs on the beaches of SNI from mid-June to mid-July. Females nurse their pups for about eight days and then begin an alternating pattern of foraging at sea vs. attending and nursing the pup on land, which lasts for about eight months, and sometimes up to a year. California sea lions also haul out at SNI during the molting period in September, and smaller numbers of females and juveniles haul out during most of the year.

Pacific Harbor Seals

Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–500 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996). A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. Based on the most recent harbor seal counts (2002) and including a correction factor for the above, the estimated population of harbor seals in California is 27,863 (Caretta *et al.*, 2005), with an estimated minimum population of 25,720 for the California stock of harbor seals. Counts of harbor seals in California showed a rapid increase from 1972 to 1990, but since 1990 there has been no net population growth along the mainland or the Channel Islands. Though no formal determination of Optimal Sustainable Population (OSP) has been made, the decrease in the growth rate may indicate that the population has reached its carrying capacity. The harbor seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Harbor seals haul out at various sandy, cobble, and gravel beaches around SNI and pupping occurs on the beaches from late February to early April, with nursing of pups extending into May. Harbor seals may also haul out during molting period in late Spring, and smaller numbers haul out at other times of year. Harbor seal abundance increased at SNI from the 1960s until 1981, but since the average counts have not changed significantly. From 1982 to 1994, numbers of harbor seals have fluctuated between 139 and 700 harbor seals based on both peak ground counts and annual photographic survey photos. The most recent aerial count was of 457 harbor seals in 1994.

Northern Elephant Seals

Northern elephant seals breed and give birth in California (U.S.) and Baja California primarily on offshore islands, from December to March (Stewart *et al.*, 1994). The California breeding stock, which includes the animals on SNI, is now demographically separated from the Baja California population. Based on trends in pup counts, northern elephant seal colonies appeared to be increasing in California through 2001. The population size of northern elephant seals in California is estimated to be 101,000 animals, with a minimum population estimate of 60,547 (Carretta *et al.*, 2005). A continuous average growth rate (though it has declined a bit in recent years) of 8.3 percent has seen numbers of this species increase from 100 in 1900 to the current population size (Caretta *et al.*, 2005). The northern elephant seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Increasing numbers of elephant seals haul out at various sites around SNI. Based on a pup count in 1995 that found 6,575 pups, scientists estimated that over 23,000 elephant seals may use SNI in a year (NMFS, 2003). From 1988 to 1995 the pup counts on SNI increased at an average rate of 15.4 percent per year, however, the growth rate of the population as a whole seems to have declined in recent years (NMFS, 2003). Pupping occurs on the beaches of SNI from January to early February, with nursing of pups extending into March. Northern elephant seals also haul out during the molting periods in the spring and summer, and smaller numbers haul out at other times of the year.

Potential Effects of Activities on Marine Mammal

Variable numbers of sea lions, harbor seals, and elephant seals typically haul out near seven of the nine study sites used for abalone research, with breeding activity occurring at four of these seven sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites. For the previous IHA, the applicant estimated that pinnipeds typically haul out near six of the nine study sites, with breeding activity occurring at five of these six sites. However, during field work in 2003 and 2004, it became apparent that non-breeding California sea lions had begun to haul out regularly at an additional abalone study site, and that sea lions and elephant seals hauled out at one of the study sites are non-breeding animals; therefore, it has become evident that seven of the nine study sites are used by pinnipeds for hauling out, with breeding activity occurring at four of these seven sites.

Incidental harassment may result if hauled animals move to increase their distance from persons involved in abalone surveys. Although marine mammals will not be deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out directly upon the permanent abalone study plots. In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups. However, mitigation measures including time of year restrictions that require avoidance of all sites with California sea lion pups or harbor seal pups will be incorporated into the IHA. Though elephant seal pups are sometimes present at abalone surveys, NMFS does not expect risk of pup mortalities because elephant seals are far less reactive to researcher presence than the other two species. Also, researchers use great care approaching sites and elephants seals pup on the sand while the permanent study sites are on rocks, leaving the two always separated by at least 50 m (164 ft)). IN fact, only an estimated 16 total (adult) elephant seals have been disturbed in the last two years (of 971 present).

Mitigation

Several mitigation measures to reduce the potential for harassment from population assessment research surveys will be implemented as part of the SNI abalone research activities. Primarily, mitigation of the risk of disturbance to pinnipeds simply requires that researchers are judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be re-occupied by any hauled marine mammals that may have been disturbed by the presence of abalone researchers.

The potential risk of injury or mortality will be avoided with measures required under the authorization. Disturbances to females with dependent pups (in the cases of California sea lions and Pacific harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to the four black abalone study sites with resident pinnipeds during periods of breeding and lactation from mid-February through the end of October. The previous authorization required the applicant to avoid conducting survey research at certain study sites that may have breeding and/or lactating pinnipeds during the period from February through October. However, during field work in early 2004 it became evident that pupping by harbor seals at these sites does not begin until the latter half of February. Therefore, the current authorization is shortened to exclude the first half of February. During this period, abalone research would be confined to the other five sites where pinniped breeding and post-partum nursing does not occur. Limiting visits to the four breeding and lactation sites to periods when these activities do not occur (November, December, January, and the first half of February) will reduce the possibility of incidental harassment and the potential for serious injury or mortality of dependent California sea lion pups and Pacific harbor seal pups to near zero.

Northern elephant seal pups are present at four sites during winter months. Risks of injury or mortality of elephant seal pups by mother/pup separation or trampling are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Also, elephant seal pupping typically occurs on the sandy beaches at SNI, approximately 50 m (164 ft) or more away from the abalone study sites. Possible take of northern elephant seal pups will be minimized by using a very careful approach to the study sites and avoiding the proximity of hauled seals and any seal pups during collection of abalone population data.

One individual Guadalupe fur seal was seen at study site 8 on two separate occasions during the summer months in the mid–1980's. No individuals of this species have been seen during abalone research work since then. Thus, limitation of research visits to site 8 to the period November through January eliminates the potential for taking of Guadalupe fur seals by harassment. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any disturbance. Harassment, injury, or mortality of Guadalupe fur seals will be prevented by immediately suspending research work and vacating any study area in which this species is seen. Therefore, an authorization for the taking of Guadalupe fur seals by harassment is neither required nor requested. Sea otters are not expected ashore during the time periods when the research activities would be conducted. However, if sea otters are sighted ashore during the abalone research, Dr. VanBlaricom would follow similar procedures in place for fur seals, suspending research activities in any areas California sea otters are occupying.

Monitoring

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy. The U.S. Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore,

monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Information recorded will include species counts (with numbers of pups), numbers of observed disturbances, and descriptions of the disturbed behaviors during the abalone surveys. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD and NMFS, allowing transmittal of this information to appropriate agencies and personnel.

If at any time injury or death of any marine mammal occurs that may be a result of the proposed abalone research, VanBlaricom will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the year-long field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Numbers of Marine Mammals Expected to be Harassed

The distribution of pinnipeds hauled out on beaches is not even. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way. In VanBlaricom's 2004 and 2005 abalone survey field seasons, respectively, the following numbers of marine mammals were disturbed (potentially harassed): 1,472 and 983 California sea lions (of 2,329 and 1,383 present); 99 and 88 Pacific harbor seals (of 108 and 99 present); and 7 and 9 northern elephant seals (of 562 and 409 present). The researcher considered an animal to have been disturbed if it moved, even a few feet, in response to the researcher's presence or if the animal was already moving and changed direction. Animals that raised their head and looked at the researcher without moving were not considered disturbed. Based on past observations and assuming a maximum level of incidental harassment of marine mammals at each site during periods of visitation, NMFS estimates that the maximum total possible numbers of individuals that will be incidentally harassed (resulting from one complete cycle of visits to the nine study sites) would be 1600 California sea lions, 120 Pacific harbor seals, and 20 northern elephant seals. Three visit cycles are anticipated during the year-long validity of an IHA. As noted earlier, any site occupied by Guadalupe fur seals will be vacated by researchers immediately and no taking of this species will occur.

NMFS anticipates that Level B harassment of small numbers of California sea lions, Pacific harbor seals and northern elephant seals may occur incidental to the proposed continuation of black abalone research at SNI and that these takings will result in no more than a negligible impact on these marine mammal species or stocks or on their habitats.

Possible Effects of Activities on Marine Mammal Habitat

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around each of the nine study sites less desirable as haulout sites for a total of 8.5 hours per year.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for California sea lions, Pacific harbor seals, or northern elephant seals in California waters, and thus, there are no anticipated effects on their availability for subsistence uses.

ESA

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described abalone research and the accompanying IHA will have no effect on species or critical habitat protected under the ESA. Therefore, consultation under Section 7 was not required.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) of the Issuance of an IHA to Take Marine Mammals, by Harassment, During Black Abalone Research at SNI, California and subsequently issued a Finding of No Significant Impact on November 21, 2005. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Determinations

Based on the information contained in the application, the December 3, 2004 (69 FR 70249) **Federal Register** notice, Dr. VanBlaricom's monitoring reports for previous field seasons, and this document, NMFS has determined that the impact of abalone research will result, at most, in a temporary modification in behavior by small numbers of California sea lions, Pacific harbor seals, and northern elephant seals, in the form of head alerts, movement away from the researchers and/or flushing from the beach. In addition, no take by injury or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity and the distance between the seals and the researchers, NMFS anticipates that the number of potential harassment takings will be small relative to the species stock sizes and will have no more than a negligible impact on the affected species or stocks. The project is not expected to interfere with any subsistence hunts. NMFS has therefore determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to Dr. Glenn R. VanBlaricom for the harassment of small numbers of California sea lions, Pacific harbor seals, and northern elephant seals incidental to black abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 29, 2005.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–23985 Filed 12–12–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 051128311–5311–01]

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: Pursuant to the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. 109–108, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP). The PTFP assists, through matching grants, in the planning and construction of public telecommunications facilities in order to: (1) Extend delivery of services to as many citizens as possible by the most cost-effective means, including use of broadcast and non-broadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and controlled by minorities and women; (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

DATES: Applications must be received prior to 5 p.m. Eastern Standard Time (Closing Time), February 7, 2006 (Closing Date). Applications submitted by facsimile or electronic means are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Closing Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after this deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to PTFP at the following address (please note the new room number): NTIA/PTFP, Room H–4096, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*).

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*).

SUPPLEMENTARY INFORMATION:

Electronic Access

The full funding opportunity announcement for the PTFP FY 2006 grant cycle is available through *www.Grants.gov* or by contacting the PTFP office at the address noted above.

Funding Availability

The Congress has appropriated $20 million for FY 2006 PTFP awards. For FY 2005, NTIA awarded $21.2 million in PTFP funds to 123 projects, including 73 radio awards, 39 television awards and 11 nonbroadcast awards. The radio awards ranged from $9,255 to $451,848. The television awards ranged from $11,298 to $927,937. The nonbroadcast awards ranged from $30,495 to $440,000.

Statutory and Regulatory Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390–393, 397–399(b). The PTFP operates pursuant to rules (1996 Rules) which were published on November 8, 1996 (61 FR 57966). Copies of the 1996 Rules (15 CFR Part 2301) are posted on the NTIA Internet site at *www.ntia.doc.gov/Rules/currentrules.htm* and NTIA will make printed copies available to applicants upon request.

Supplemental Policies

The following supplemental policies will also be in effect:

(A) Applicants may file emergency applications at any time.

(B) Applicants may file requests for Federal Communications Commission (FCC) authorizations with the FCC after the PTFP Closing Date. Grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant.

(C) PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. PTFP applicants for distance learning projects must notify the state telecommunications agencies in the states in which they are located but are not required to notify every state telecommunications agency in a potential service area.

(D) For digital television conversion projects, NTIA has created two new Subpriorities in the Broadcast Other category.

(E) For digital radio conversion projects, NTIA has created a new Subpriority in the Broadcast Other category.

Catalog of Domestic Federal Assistance: 11.550, Public Telecommunications Facilities Program.

Eligibility

To apply for and receive a PTFP Construction Grant or Planning Grant, an applicant must be: (a) A public or noncommercial educational broadcast station; (b) a noncommercial telecommunications entity; (c) a system of public telecommunications entities; (d) a non-profit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (e) a state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

Evaluation and Selection Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.18 for the Selection Process.

Evaluation Criteria

See 15 CFR 2301.17 for a full description of the Evaluation Criteria. The six evaluation criteria are (1) Applicant Qualifications, (2) Financial Qualifications, (3) Project Objectives, (4) Urgency, (5) Technical Qualifications (construction applicants only) or Planning Qualifications (planning applicants only), and (6) Special Consideration.

Funding Priorities and Selection Factors

See 15 CFR 2301.4 and the supplemental policies above for a description of the PTFP Priorities and 15 CFR 2301.18 for the Selection Factors.

Cost Sharing Requirements

PTFP requires cost sharing. By statute, PTFP cannot fund a construction project for more than 75% of the eligible project

costs. NTIA has established a policy of funding most new public broadcasting station activation projects at a 75% federal share, and most other television, radio and nonbroadcast projects at a 50% federal share. NTIA can fund planning applications up to 100% of the eligible project costs, but has established a policy of funding planning applications at a 75% share. Any applicant can request federal funding greater than PTFP's policy, up to the statutory maximum, and provide justification for the request.

Intergovernmental Review

PTFP applications are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the PTFP application form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the PTFP website and at the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet (*www.dunandbradstreet.com*).

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not obligate the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB Control No. 0660–0003.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for this rule concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 05–23992 Filed 12–12–05; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Spinal Cord Injury Model Systems Centers (SCIMS Centers) and Disability Rehabilitation Research Projects (DRRPs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for SCIMS Centers and DRRPs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes certain funding priorities and a selection criterion for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for Spinal Cord Injury Model Systems Centers (SCIMS centers) and a priority and selection criterion for Disability and Rehabilitation Research Projects (DRRPs). The Assistant Secretary may use these priorities and selection criterion for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend these priorities and selection criterion to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before January 12, 2006.

ADDRESSES: Address all comments about these proposed priorities and selection criterion to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov or NIDRR.comments@ed.gov.*

You must include the term ''Notice of proposed priorities for SCIMS Centers and DRRPs'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This notice of proposed priorities is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Proposed Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.* The Plan, which was published in the **Federal Register** on July 27, 2005 (70 FR 43522), can be accessed on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister/other/2005–3/072705d.html*).

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of

disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Invitation To Comment

We invite you to submit comments regarding these proposed priorities and selection criterion. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities and selection criterion. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments on this notice of proposed priorities in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice of proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities and selection criterion in a notice in the **Federal Register**. We will determine the final priorities and selection criterion after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Background

The SCIMS Program

In 1972, the U.S. Department of Health, Education, and Welfare established the national Spinal Cord Injury Model Systems (SCIMS) Program by funding four projects to provide comprehensive, multidisciplinary rehabilitation services to persons who experience Spinal Cord Injury (SCI) and to conduct research to foster advances in SCI rehabilitation. The SCIMS program became part of the research portfolio of NIDRR when NIDRR was established (initially as the National Institute of Handicapped Research) within the Department of Health, Education, and Welfare (now Education) in 1978.

The SCIMS program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care for individuals with SCI, which for purposes of this program is defined as a clinically discernible degree of neurologic impairment following a traumatic event. Since 1973, SCIMS programs have collected and contributed information on common data elements for a centralized SCI database, the SCIMS database, which is maintained through a NIDRR-funded grant for a National Data and Statistical Center. (Additional information on the SCIMS database can be found at *http://www.spinalcord.uab.edu*.) The data collected and contributed to the database thus far have involved more than 23,000 cases, with follow up data on some subjects covering a 30-year period post injury. There are certain criteria that must be met in order for a SCIMS program to include information relating to a particular subject in the database. Eligible subjects must—

(a) Be admitted to and receive care in at least one component of a model SCI system, including acute or surgical care, inpatient rehabilitation, outpatient rehabilitation, or day-hospitalization rehabilitation; (b) Be treated at a model SCI system within one year of the injury; (c) Sign a consent form and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) authorization; (d) Reside in a geographic catchment area of the model system at the time of the injury; and (e) Be a U.S. citizen.

SCIMS Centers

There are currently 16 SCIMS centers funded by NIDRR. These centers provide comprehensive rehabilitation services to individuals with SCI and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Each SCIMS Center funded under this program establishes a multidisciplinary system for providing rehabilitation services specifically designed to meet the special needs of individuals with SCI. These services include acute care as well as periodic inpatient or outpatient follow up and vocational services. Centers demonstrate and evaluate the benefits and cost effectiveness of their systems for providing rehabilitation services to individuals with SCI and demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with SCI. Centers also demonstrate and evaluate methods of community outreach and education for individuals with SCI in connection with the problems these individuals experience in such areas as housing, transportation, recreation, employment, and community activities. SCIMS centers engage in initiatives and new approaches and maintain close working relationships with other governmental and voluntary institutions and organizations to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among SCI researchers.

The Conference Report accompanying the 2005 Appropriations Act noted that NIDRR was receiving additional funding for the SCIMS program and stated that the conferees intended that the

additional funds be used to support investments that could facilitate multi-center research on SCI therapies and interventions, and the use of technology in providing SCI rehabilitation services. In order to plan for this expanded funding, NIDRR conducted a review of its current program and met with SCI organizations and Federal partners. The priorities and selection criterion proposed in this notice are the result of this review and subsequent discussions. It is NIDRR's intention that, through funding of projects under these priorities, the SCIMS program will serve as a platform for multi-site research that contributes to the formulation of practice guidelines to improve outcomes for individuals with SCI.

Proposed Priorities and Selection Criterion

In accordance with section 204(b)(4) of the Rehabilitation Act of 1973, as amended (Act), and 34 CFR part 359, Priority One will provide for the funding of SCIMS centers that will build upon the work of the current centers, to provide comprehensive rehabilitation services to individuals with SCI and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Priority Two, authorized under section 202 of the Act and 34 CFR part 350, will provide for the funding of Disability and Rehabilitation Research Projects (DRRP) that will conduct multi-site research that contributes to evidence-based rehabilitation interventions and clinical practice guidelines that improve the lives of individuals with SCI. These projects will serve the overall purpose of the DRRP program, which is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Act. DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

The Department is interested in ensuring that grantees use rigorous methods to carry out multi-site research conducted under Priority Two. Therefore, we propose an additional criterion to address methods for carrying out multi-site research collaboration for Priority Two. This proposed criterion is intended to emphasize the importance of multi-site research collaboration.

To be eligible under Priority Two, an applicant must have received a grant under Priority One. The Department intends to announce the competition for Priority Two awards after selecting the grantees from the Priority One competition. Only successful applicants from the Priority One competition will be eligible to apply for awards under the Priority Two competition.

Proposed Priority One—SCIMS Centers

The Assistant Secretary proposes a priority for the funding of Spinal Cord Injury Model Systems (SCIMS) centers to conduct research that contributes to evidence-based rehabilitation interventions and clinical and practice guidelines that improve the lives of individuals with spinal cord injury (SCI). Each SCIMS center must—

1. Contribute to continued assessment of long-term outcomes of SCI by enrolling at least 30 subjects per year into the SCIMS database, following established protocols for the collection of enrollment and follow-up data on subjects;

2. Contribute to improved outcomes for persons with SCI by proposing and participating in at least one collaborative research module project, which may range from pilot research to more extensive studies (At the beginning of the funding cycle, the SCI model system directors, in conjunction with NIDRR, will select specific modules for implementation from the approved applications); and

3. Contribute to improved long-term outcomes of individuals with SCI by conducting one site-specific research project to test innovative approaches to treating and evaluating SCI outcomes in accordance with the focus areas identified in NIDRR's Proposed Long-Range Plan for FY 2005–2009 (Plan).

In carrying out these activities, applicants may select from the following research domains related to specific areas of the Plan: Health and function, employment, participation and community living, and technology for access and function.

In addition, applicants must address the following requirements:

- Provide a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with SCI. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services.
- Address the needs of people with disabilities including individuals from traditionally underserved populations.
- Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences.
- Ensure participation of individuals with disabilities in all aspects of SCIMS research.

Proposed Priority Two and Selection Criterion for SCIMS Multi-Site Research Projects

Proposed Priority

The Assistant Secretary proposes a priority for the funding of Spinal Cord Injury Model Systems (SCIMS) multi-site research projects to conduct research that contributes to evidence-based rehabilitation interventions and clinical practice guidelines that improve the lives of individuals with spinal cord injury (SCI).

To be eligible under this priority, an applicant must have received a grant under the SCIMS Centers priority. Following completion of a competition under the SCIMS Centers priority, the Department will invite successful applicants under that competition to apply for funding as a lead center under this SCIMS Multi-Site Research Projects priority.

Each SCIMS multi-site research project must—

1. Ensure utilization of SCIMS capacity by collaborating with three or more of the NIDRR-funded SCIMS centers (for a minimum of four SCIMS sites). Applicants may propose to include other SCI research sites that are not participating in a NIDRR-funded program in their multi-site research projects;

2. Contribute to improved long-term outcomes of individuals with SCI by conducting multi-site research on questions of significance to SCI rehabilitation, using clearly identified research designs. The research must focus on one or more specific domains identified in NIDRR's Proposed Long-Range Plan for FY 2005–2009 (Plan), including health and function, participation and community living, technology, and employment, and ensure that the research study has appropriate research hypotheses and methods to generate reliable and valid findings;

3. Demonstrate the capacity to carry out multi-site research projects,

including the ability to coordinate research among centers; maintain data quality; and adhere to research protocols, confidentiality requirements, and data safety requirements; and

4. Specify start up activities that will be required to mount the proposed multi-site research project, including infrastructure requirements and measurement tools. Applicants must specify in their applications the amount requested, not to exceed $800,000, to cover these start-up costs.

In addition, applicants must address the following requirements:

• Address the needs of people with disabilities, including individuals from traditionally underserved populations.

• Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center by providing scientific results and information for dissemination to clinical and consumer audiences.

• Ensure participation of individuals with disabilities in all aspects of model systems research.

Proposed Selection Criterion

In accordance with the provisions of 34 CFR 350.53 and 350.54 and in addition to the selection criteria specified in those sections, the Secretary proposes to consider the following factor in evaluating applications submitted under the SCIMS multi-site research projects priority:

The extent to which the applicant clearly documents its capacity to manage multi-site research projects, including administrative capabilities, experience with management of multi-site research protocols, and demonstrated ability to maintain standards for quality and confidentiality of data gathered from multiple sites.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these proposed priorities are minimal while the benefits are significant.

The benefits of the Special Projects and Demonstrations for Spinal Cord Injury and Disability and Rehabilitation Research Projects Programs have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these proposed priorities are that the establishment of new SCIMS centers and the DRRPs conducting SCIMS multi-site research projects will support the President's NFI and will improve the lives of persons with disabilities. These centers and DRRPs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR parts 350 and 359.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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*.

(Catalog of Federal Domestic Assistance Number 84.133N, Model Spinal Cord Injury Centers and 84.133A, Disability Rehabilitation Research Projects) Program Authority: 29 U.S.C. 760, 764(a), and 764(b)(4).

Dated: December 7, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–23937 Filed 12–12–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0061; FRL–7749–8]

Data Submissions for the Voluntary Children's Chemical Evaluation Program; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment on the following Information Collection Request (ICR): Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP) (EPA ICR No. 2055.02, OMB Control No. 2070–0165). This ICR involves a collection activity that is currently approved and scheduled to expire on September 30, 2006. The information collected under this ICR provides information to EPA on chemicals to which children are likely to be exposed so that any risks can be assessed and managed. Information on health effects, exposure, risk, and data needs will be submitted by chemical manufacturers who have volunteered to participate in VCCEP. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number EPA–HQ–OPPT–2005–0061, must be received on or before February 13, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460;

telephone number: (202) 564–8172; fax number: (202) 564–4755; e-mail address: *roman.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a manufacturer or importer of certain chemicals and have volunteered to sponsor your chemical in the VCCEP. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., basic chemical manufacturing; resin, synthetic rubber and artificial and synthetic fibers and filaments manufacturing; pesticide, fertilizer, and other agricultural chemical manufacturing; soap, cleaning compound, and toilet preparation manufacturing, etc.
- Paint and coating manufacturing (NAICS 32551), e.g., enamel paints manufacturing, latex paint manufacturing, paints manufacturing, stains manufacturing, varnishes manufacturing, etc.
- Adhesive manufacturing (NAICS 32552), e.g., adhesives manufacturing, caulking compounds manufactuing, epoxy adhesives manufacturing, glues manufacturing, rubber cements manufacturing, tile adhesives manufacturing, etc.
- Textile mills (NAICS 313), e.g., acetate spun yarns, acrylic spun yarns, cotton spun yarns, flax spun yarns, hard fiber spun yarns, natural fiber spun yarns, nylon spun yarns, rayon spun yarns, wool spun yarn, etc.
- Petroleum refineries (NAICS 324110), e.g., aviation fuels manufacturing, crude oil refining, diesel fuels manufacturing, fuel oils manufacturing, gasoline made in petroleum refineries, kerosene manufacturing, petroleum refineries, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPPT–2005–0061. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website: EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. 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. EPA's policy is that EPA will not edit your comment, and 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.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPPT–2005–0061. The 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.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number EPA–HQ–OPPT–2005–0061. In contrast to EPA's electronic public docket, EPA's 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, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0061. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP).

ICR numbers: EPA ICR No. 2055.02, OMB Control No. 2070–0165.

ICR status: This ICR is currently scheduled to expire on September 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: VCCEP is a voluntary program intended to provide data to

enable the public to understand the potential health risks to children associated with certain chemical exposures. EPA has asked companies that manufacture and/or import 20 chemicals that have been found in human tissues and the environment to volunteer to sponsor their evaluation in VCCEP. VCCEP consists of three tiers that a sponsor may commit to separately. As part of their sponsorship, companies submit commitment letters, collect and/or develop health effects and exposure information on their chemical(s), integrate that information in a risk assessment, and develop a ''Data Needs Assessment.'' The Data Needs Assessment discusses the need for additional data, which could be provided by the next tier, to fully characterize the risks the chemical may pose to children.

The information submitted by the sponsor will be evaluated by a group of scientific experts with extensive, relevant experience in toxicity testing and exposure evaluations, a Peer Consultation Group. This group will forward its opinions to EPA and the sponsor(s) concerning the adequacy of the assessments and the need for development of any additional information to fully assess risks to children. EPA will consider the opinions of the Peer Consultation Group and announce whether additional higher tier information is needed. Sponsors and the public will have an opportunity to comment on EPA's decision concerning data needs. EPA will consider these comments and issue a final decision. If the final decision is that additional information is needed, sponsors will be asked to volunteer to provide the next tier of information. If additional information is not needed, the risk communication and, if necessary, risk management phases of the program will be initiated.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 231 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Manufacturers or importers of certain chemicals who have volunteered to sponsor chemicals in the VCCEP.

Estimated total number of potential respondents: 20.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 3.5 responses per respondent annually.

Estimated total annual burden hours: 106,256 hours.

Estimated total annual burden costs: $8,973,067.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 48,076 hours (from 154,332 hours to 106,256 hours) in the total estimated respondent burden compared with that identified in the information collection most recently approved by OMB. This decrease represents the net effect of many changes in estimates and assumptions made from the previous VCCEP ICR, based on recent experiences with the VCCEP pilot. First, the estimated number of chemicals participating in the program was reduced from 23 to 20, based on actual participation. Second, because the Tier 1 Peer Consultation Documents submitted thus far to EPA have been so comprehensive (e.g., many have contained information on Tier 2 and Tier 3 level tests), EPA is estimating that fewer chemicals will advance to the higher tiers.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–23974 Filed 12–12–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). 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 instrument(s) 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer-Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*.

Final approval under OMB delegated authority of the revision, without extension, of the following reports:

Report titles: Report of Changes in Organizational Structure, Report of Changes in FBO Organizational Structure.

Agency form number: FR Y–10, FR Y–10F, and FR Y–10S.

OMB control number: 7100–0297.

Frequency: Event-generated.

Reporters: Bank holding companies (BHCs), foreign banking organizations (FBOs), and state member banks unaffiliated with a BHC.

Annual reporting hours: 18,004 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 5,510.

General description of report: This information collection is mandatory (12 U.S.C. 248(a)(1), 602, 611a, 1843(k), 1844(c)(1)(A), 3106(a) and 12 CFR 211.13(c), 225.5(b), and 225.87). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: The FR Y–10 is an event-generated report filed by top-tier domestic BHCs, including financial holding companies (FHCs), and state member banks unaffiliated with a BHC or FHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in both banking and nonbanking activities.

The FR Y–10F is an event-generated report filed by FBOs, including FHCs, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to ensure compliance with U.S. banking laws and regulations and to determine the risk profile of the FBO structure.

Current action: On September 29, 2005, the Federal Reserve published a notice soliciting comments on the proposed supplement (70 FR 56897). The comment period ended on November 28, 2005. The Federal Reserve received one general comment letter; however, the proposal is unchanged from the one the Board initially approved.

In the comment letter, a small commercial bank generally questioned the usefulness of the proposed supplement for supervisory purposes. As described in the initial **Federal Register** notice, the data would be used to enhance the Federal Reserve's ability to compare regulatory data to market data and to increase the Federal Reserve's effectiveness in assessing banking organizations' compliance with the Sarbanes-Oxley Act of 2002 (SOX). Although the commenter asserted that the Federal Reserve was trying to make non-public organizations comply with SOX, non-public organizations are only required to check two boxes indicating that they have no data to report. Therefore, SOX compliance would not be required and the burden for non-public organizations should be minimal.

As proposed, the Federal Reserve will add a Supplement to the Reports of Changes in Organizational Structure (FR Y–10S) to enhance the Federal Reserve's ability to compare regulatory data to market data and to increase the Federal Reserve's effectiveness in assessing banking organizations' compliance with Sarbanes-Oxley Act of 2002 (SOX). The initial collection of this data will be as of December 31, 2005.

The FR Y–10S panel will comprise top-tier BHCs, FBOs, and state member banks that are not controlled by a BHC. All of these organizations currently file either the FR Y–10 or FR Y–10F. However, FBOs will not be required to report data for Schedule B.

Board of Governors of the Federal Reserve System, December 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7239 Filed 12–12–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved information collections. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the reports. The agencies will then submit the reports to OMB for review and approval.

DATES: Comments must be submitted on or before February 13, 2006.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail stop 1–5, Attention: 1557–0100, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202–874–5043.

Board: You may submit comments, identified by FFIEC 009, by any of the following methods:

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

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

FDIC: You may submit written comments, which should refer to

''Country Exposure Reports, 3064–0017,'' by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: Comments@FDIC.gov.*

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery/Courier:* 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: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at 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.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by facsimile to 202–395–6974, Attention: Federal Banking Agency Desk Officer.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, 202–874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Long, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Leneta G. Gregorie, Counsel, 202–898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Extend for Three Years, Without Revision, the Following Currently Approved Collections of Information

Report Title: Country Exposure Report and Country Exposure Information Report.

Form Number: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0100.

Estimated Number of Respondents: 21 (FFIEC 009); 21 (FFIEC 009a).

Estimated Average Time per Response: 70 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 5,880 burden hours (FFIEC 009); 441 burden hours (FFIEC 009a).

Board

OMB Number: 7100–0035.

Estimated Number of Respondents: 29 (FFIEC 009); 16 (FFIEC 009a).

Estimated Average Time per Response: 70 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 8,120 burden hours (FFIEC 009); 336 burden hours (FFIEC 009a).

FDIC

OMB Number: 3064–0017.

Estimated Number of Respondents: 21 (FFIEC 009); 21 (FFIEC 009a).

Estimated Average Time per Response: 70 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 5,880 burden hours (FFIEC 009); 441 burden hours (FFIEC 009a).

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 and 1817 (national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the 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;

d. Ways to minimize the burden of information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: November 22, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, December 1, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 5th day of December, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E5–7276 Filed 12–12–05; 8:45 am]

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

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Community Partners Bancorp, Middletown, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Town Bank, Westfield, New Jersey, and thereby indirectly acquire voting shares of Two River Community Bank, Middletown, New Jersey.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Illinois Bancshares, Inc., Karnak, Illinois; to become a bank holding company by acquiring 96.5 percent of the voting shares of The First State Bank of Grand Chain, Grand Chain, Illinois.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Beulah Bancorporation, Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of Valley Bank & Trust, Mapleton, Iowa.

Board of Governors of the Federal Reserve System, December 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7262 Filed 12–12–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation; Notice of GSA Bulletin FTR 05–08

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: This notice announces GSA Federal Travel Regulation (FTR) Bulletin 05–08. This Bulletin informs agencies that in accordance with the OMB Circular A–123 (revised), Appendix B, issued August 5, 2005, new travel charge card policies and guidance are issued to Executive Branch departments and agencies in order to help reduce the risk of fraud, misuse, and late payments. OMB Circular A–123 (revised), Appendix B is effective October 1, 2005. Bulletin FTR 05–08 may be found at *www.gsa.gov/ftrbulletins*. An amendment to the FTR on the use of the government issued travel charged card is forthcoming.

DATES: The bulletin announced in this notice is effective December 2, 2005.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501–1777. Please cite Bulletin FTR 05–08.

SUPPLEMENTARY INFORMATION:

A. Background

OMB Circular A–123 (revised), Appendix B, establishes guidance for Executive branch agencies for improving the management of government charge card programs. The requirements in OMB Circular A–123 (revised), Appendix B pertain to the use of charge card programs by agencies and their employees and must be included in internal agency regulations, procedures, and training materials. Bulletin FTR 05–08 serves as guidance to agencies on implementing those policies and guidelines that are related to the official travel charge card.

B. Procedures

Bulletins regarding Federal travel expenses are located on the Internet at *www.gsa.gov/ftrbulletins* as Federal Travel Regulation (FTR) bulletins.

Dated: December 2, 2005.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. E5–7259 Filed 12–12–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New [60-day notice]]

Office of the Secretary; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Evaluation of the Office for Human Research Protections (OHRP) Education Program Activities.

Form/OMB No.: OS–0990–New.

Use: The OHRP Evaluation of Education Activites project will evaluate the outcomes of OHRP's

educational (and outreach) activites and identify opportunities for improvements, based on information obtained on the research communities' education needs related to protection of human research subjects.

Frequency: Reporting on occasion.

Affected Public: State, local, or tribal governments, Federal Government, business or other for-profit, not-for-profit institutions.

Annual Number of Respondents: 6,598.

Total Annual Responses: 1.

Average Burden Per Response: 1 hour.

Total Annual Hours: 900.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New) Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Date: December 2, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–7251 Filed 12–12–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0004 (Formerly OMB–0348–0043) [30–day notice]

Grants.gov Program Management Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular, Revision of a currently approved collection;

Title of Information Collection: SF–424 Application for Federal Assistance;

Form/OMB No.: OS–4040–0004 (Formerly OMB–0348–0043);

The SF–424 Application for Federal Assistance (OMB control number 0348–0043) was cleared by OMB for emergency use on July 31, 2003, **Federal Register** notice [68 FR 44974]. OMB has since assigned the responsibility for this government-wide standard form to the Grants.gov Program Management Office and therefore the SF–424 Application for Federal Assistance OMB control number was changed in April 2005 from 0348–0043 to 4040–0004. A 60-day **Federal Register** Notice was published on September 15, 2005 [Vol. 70. No. 178].

Use: In the **Federal Register** notice published April 8, 2003 [68 FR 17090], OMB proposed to establish a government-wide standard set of data elements and definitions for grant-related applications. After consultation with the public, OMB added four data elements to the existing Standard Form 424 (SF–424), Application for Federal Assistance data elements and established the data as the standard core data set for use on both paper and electronic applications. After obtaining emergency clearance, July 31, 2003, **Federal Register** notice, [68 FR 44974], use of the standard data elements was implemented through the electronic grants application process of Grants.gov, and was deployed in October 2003 as part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

OMB recognized that a transition period would be needed to provide agencies time to adapt their application forms and systems to the SF–424 core data set and to phase out the use of the old forms. OMB committed to a one-year transition period and further committed to reevaluate the data set at the end of the transition period. Following the expiration of the transition period, a cross-agency working group recommended revisions to the SF–424 core data set and form. Based on these recommendations, the Grants.gov Program office now proposes the addition of the following three new standard data elements to the SF–424 data set and form: Requesting entity's Province to collect non-US geographic subdivision data for international address purposes, if applicable. Requesting entity's Point of Contact's Organizational Affiliation, if applicable. Requesting entity's Point of Contact's Title, if applicable.

The Grants.gov Program office further proposes deletion of the requesting entity's designation of construction or non-construction type of submission data element. Also proposed are non-data collection related changes, *i.e.*, renaming of data elements. These changes are presented in the supporting statement found on the HHS Web site at *http://www.hhs.gov/oirm/infocollect/pending.*

Federal agencies will not be required to collect all of the information included in the data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

The efforts to address potential future revisions to the SF–424A and SF–424C budget forms and categories and to evaluate the SF–424B and SF–424D assurance language are separate efforts to be undertaken by the Public Law 106/107 working groups and have no impact upon the proposed revisions to the SF–424 data set or form.

An estimate of the total burden was submitted during the first information collection package for the SF–424 on April 8, 2003, **Federal Register** notice [68 FR 17090]. The estimate has been updated based on the Paperwork Reduction Act Worksheets (OMB 83–C) received from the agencies. Collectively, the agencies plan to receive 142,223 applications annually and estimate that it takes applicants one hour on average to complete each application. Cumulatively, the agencies report the total burden to applicants to be 146,758 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Federal, State, Local and Tribal governments; farms; non-profit institutions, and other for-profit.

Total Annual Respondents: 77,576.

Total Annual Responses: 142,223.

Average Burden Per Response: 1 hour.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: *OMB Desk Officer:* Katherine Astrich, OMB Human Resources and Housing Branch, Attention: (OMB 4040–0004), New Executive Office Building, Room 10235, Washington, DC 20503.

Date: December 2, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–7252 Filed 12–12–05; 8:45 am]

BILLING CODE 4157–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–215]

Update on the Status of the Superfund Substance-Specific Applied Research Program

Editorial Note: FR Doc. 05–23361 was originally published at page 71506 in the issue of Tuesday, November 29, 2005. The corrected document is republished below in its entirety, due to printing errors.

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This Notice provides the status of ATSDR's Superfund-mandated Substance-Specific Applied Research Program (SSARP) which was last updated in a **Federal Register** notice in 2002 (67 FR 4836). Authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also known as the Superfund statute), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i)], this research program was initiated on October 17, 1991. At that time, a list of priority data needs for 38 priority hazardous substances frequently found at waste sites was announced in the **Federal Register** (56 FR 52178). The list was subsequently revised based on public comments and published in final form on November 16, 1992 (57 FR 54150).

The 38 substances, each of which is found on ATSDR's Priority List of Hazardous Substances (68 FR 63098, November 7, 2003), are aldrin/dieldrin, arsenic, benzene, beryllium, cadmium, carbon tetrachloride, chloroethane, chloroform, chromium, cyanide, p,p'-DDT,DDE,DDD, di(2-ethylhexyl) phthalate, lead, mercury, methylene chloride, nickel, polychlorinated biphenyl compounds (PCBs), polycyclic aromatic hydrocarbons (PAHs—includes 15 substances), selenium, tetrachloroethylene, toluene, trichloroethylene, vinyl chloride, and zinc.

On July 30, 1997, priority data needs for 12 additional hazardous substances frequently found at waste sites were determined and announced in the **Federal Register** (62 FR 40820). The 12 substances, each of which is included in ATSDR's Priority List of Hazardous Substances, are chlordane, 1,2-dibromo-3-chloropropane, di-n-butyl phthalate, disulfoton, endrin (includes endrin aldehyde), endosulfan (alpha-, beta-, and endosulfan sulfate), heptachlor (includes heptachlor epoxide), hexachlorobutadiene, hexachlorocyclohexane (alpha-, beta-, delta- and gamma-), manganese, methoxychlor, and toxaphene.

More recently, priority data needs for 10 additional hazardous substances frequently found at waste sites were determined and announced in the **Federal Register** (68 FR 22704). The ten substances, each of which is included in ATSDR's Priority List of Hazardous Substances, are asbestos, benzidine, chlorinated dibenzo-p-dioxins, 1,2-dibromoethane, 1,2-dichloroethane, 1,1-dichloroethene, ethylbenzene, pentachlorophenol, 1,1,2,2-tetrachloroethane, and total xylenes.

Currently, the priority data needs for acrolein and barium are being identified and will be reported in a future **Federal Register** notice.

To date, 270 priority data needs have been identified for the 60 hazardous substances, and 86 priority data needs have been filled (Table 1). ATSDR fills these research needs through U.S. Environmental Protection Agency (EPA) regulatory mechanisms (test rules), private-sector voluntarism, and the direct use of CERCLA funds. Additional priority data needs are being addressed through collaboration with the National Toxicology Program (NTP), by ATSDR's Great Lakes Human Health Effects Research Program, and other Agency programs. Priority data needs documents describing ATSDR's rationale for prioritizing research needs for each substance are available. See **ADDRESSES** section of this Notice.

This Notice also serves as a continuous call for voluntary research proposals. Private-sector organizations may volunteer to conduct research to address specific priority data needs identified in this Notice by indicating their interest through submission of a letter of intent to ATSDR (see **ADDRESSES** section of this Notice). A Tri-Agency Superfund Applied Research Committee (TASARC) composed of scientists from ATSDR, National Institute of Environmental Health Sciences (NIEHS)/NTP, and the EPA, will review all proposed voluntary research studies.

DATES: ATSDR provides updates on the status of its Substance-Specific Applied Research Program approximately every three years or sooner, as needed. ATSDR considers the voluntary research effort to be important to the continuing implementation of the SSARP. Therefore, the Agency strongly encourages private-sector organizations to volunteer at any time to conduct research to fill data needs until ATSDR announces that other research mechanisms are in place to address those specific data needs.

ADDRESSES: Private-sector organizations interested in volunteering to conduct research can write to Yee-Wan Stevens, M.S., Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333, e-mail: *YStevens@cdc.gov.* Information about pertinent ongoing or completed research that may fill priority data needs cited in this Notice should be similarly addressed.

Other Requirements: Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Yee-Wan Stevens, M.S., Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333, telephone: (770) 488–3325, fax: (770) 488–4178.

SUPPLEMENTARY INFORMATION:

Background

CERCLA as amended by SARA [42 U.S.C. 9604(i)] requires that ATSDR (1) jointly with the EPA, develop and

prioritize a list of hazardous substances found at National Priorities List (NPL) sites, (2) prepare toxicological profiles for these substances, and (3) assure the initiation of a research program, in conjunction with NTP, to address identified data needs associated with the substances. Before starting such a program, ATSDR will consider recommendations of the InterAgency Testing Committee on the type of research that should be done. This committee was established under section 4(e) of the Toxic Substances Control Act of 1976 [15 U.S.C. 2604(e)](TSCA).

The major goals of the ATSDR SSARP are (1) to address the substance-specific information needs of the public and scientific community, and (2) to supply information necessary to improve the database used to conduct comprehensive public health assessments of populations living near hazardous waste sites. We anticipate that the information will help to establish linkages between levels of contaminants in the environment and levels in human tissue and organs associated with adverse health effects. Once such links have been established, strategies to mitigate potentially harmful exposures can be developed. This program will also provide data that can be generalized to other substances or areas of science, including risk assessment of chemicals, thus creating a scientific information base for addressing a broader range of data needs.

ATSDR encourages the use of *in vitro* assessment methods and other innovative tools for filling priority data needs. For example, the Agency believes that physiologically based pharmacokinetic (PBPK) modeling could serve as a valuable tool in predicting across route similarities (or differences) in toxicological responses to hazardous substances. Therefore, on a case-by-case basis, a priority data need can be filled using existing data and modeling. In addition, ATSDR is a member of NTP's InterAgency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and supports development, validation, and acceptance of alternative toxicological test methods that reduce, refine, and replace the use of animals, as appropriate.

CERCLA section 104(i)(5)(D) states that it is the sense of Congress that the costs for conducting this research program ''be borne by the manufacturers and processors of the hazardous substance in question,'' as required in TSCA and the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 [7 U.S.C. 136 et seq.] (FIFRA), or by cost recovery from responsible parties under CERCLA. To execute this statutory intent, ATSDR developed a plan whereby parts of the SSARP are being conducted via the regulatory mechanisms referenced (TSCA/FIFRA), private-sector voluntarism, and the direct use of CERCLA funds.

The TASARC, composed of scientists from ATSDR, NIEHS/NTP, and EPA, has been set up to:

(1) Advise ATSDR on the assignment of priorities for mechanisms to address data needs,

(2) Coordinate knowledge of research activities to avoid duplication of research in other programs and under other authorities,

(3) Advise ATSDR on issues of science related to substance-specific data needs, and

(4) Maintain a scheduled forum that provides an overall review of the ATSDR SSARP.

TASARC has met 12 times since the initiation of the SSARP. It has guided referral of priority data needs to EPA and the associated development of test rules through TSCA. In addition, it has endorsed the proposals of several private-sector organizations to conduct voluntary research. Furthermore, TASARC has become a forum for other federal agencies to bring forth their research agendas. For example, it has coordinated research efforts on hazardous pollutants with the Office of Air and Radiation, EPA. TASARC has developed testing guidelines for immunotoxicity; and has endorsed the use of decision-support methodologies such as physiologically based pharmacokinetic (PBPK) modeling and benchmark-dose modeling, where appropriate.

Additional priority data needs are being addressed through collaborative research efforts with NTP, by ATSDR's Great Lakes Human Health Effects Research Program, and other Agency programs.

Criteria for Evaluating Status of Priority Data Needs

To update the activities covered under the SSARP, criteria for evaluating the status of the priority data needs were developed. Based on these criteria and the review of the current literature, a priority data need can be filled, or unchanged.

The criteria for evaluating the status of the priority data needs are described below.

General Criteria

A priority data need is filled:

- If it has been referred to one of the implementation mechanisms and research has been initiated (Exception: priority data needs referred to EPA [i.e., included in the EPA/ATSDR test rule] and/or ATSDR Voluntary Research Program remain as priority data needs until the studies have been completed, peer reviewed and accepted by ATSDR), OR
- If an updated ATSDR toxicological profile contains relevant new studies, or if other relevant, peer-reviewed, and publicly available new studies (not included in the toxicological profile) have been identified since the finalization of the priority data needs document; and based on such studies, it is generally agreed that a priority data need has been filled.

Furthermore, in the event a priority data need is considered filled, it does not necessarily mean that the study has been completed and that ATSDR has accepted the data. It does, however, indicate that the Agency no longer considers it a priority to initiate additional studies at this time.

A priority data need remains unchanged:

- If no mechanism or information has been identified to address the priority data need, or
- If the priority data need is included in the ATSDR/EPA test rule under development and/or ATSDR Voluntary Research Program, or it is associated with a pilot substance in EPA's Voluntary Children's Chemical Evaluation Program.

Specific Criteria

Examples of specific criteria for two categories of priority data needs are described below.

- Epidemiologic studies—A priority data need is filled if multiple new studies assessing key health end points are available in ATSDR's updated toxicological profile and/or ongoing studies have been identified, e.g., human health studies supported by ATSDR's Great Lakes Human Health Effects Research Program or the Minority Health Professions Foundation Research Program. In some cases, ATSDR indicates that it will continue to evaluate new data as they become available to determine whether additional studies are needed.
- Exposure levels in humans (adults and/or children)—A priority data need is filled if (a) there are current and adequate biomonitoring data for exposed populations associated with health effects (from published or ongoing studies), or (b) there are reference range data (e.g., the Centers for Disease Control and Prevention's Third

National Report on Human Exposure to Environmental Chemicals, with data from a random sample of participants from the National Health and Nutrition Examination Survey [NHANES]) or generally agreed upon background population levels. In the latter case, ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites. It should be noted that for some of the chemicals listed in the National Report, the measurements are reported as below the limit of detection (LOD) for those chemicals. However, the LODs for all the chemicals monitored are available in the Report, and therefore, these data can be considered as estimates of background exposure levels.

In updating the SSARP, the status of the priority data needs may change as new information becomes available. Further, during the literature review, new studies may be identified suggesting other effects of concern, such as those related to endocrine disruptors and children's health, which were not included in the original list of priority data needs. In such cases, additional priority data needs may be added to the research agenda. For example, in addressing issues relating to children's health, ATSDR considers it a priority to obtain data on exposure levels in children; therefore, when such information is available, it is used to fill this additional priority data need (e.g., cadmium, chlordane, chlorinated dibenzo-p-dioxins, DDT, lead, and pentachlorophenol, see Table 1).

In contrast, the Agency may consider a previously identified priority data need to no longer be a priority to fill at this time and thus be deleted from the list of priority data needs. However, it remains a data need for the Agency. For example, as a result of reevaluation of the database for di-n-butyl phthalate, two of its previously identified priority data needs, i.e., immunotoxicity and neurotoxicty studies via oral exposure are no longer considered to be priority data needs. This is due to the fact that the immune system does not appear to be a target for di-n-butyl phthalate toxicity and that additional neurotoxicty studies do not seem necessary because of the lack of effects seen in long-term neurotoxicty studies. In addition, under the Agency's Voluntary Research Program, the Halogenated Solvents Industry Alliance, Inc. (HSIA) proposed to fill a trichloroethylene priority data need (dose-response data for intermediate-duration, oral exposure) by conducting PBPK modeling to obtain the data for oral exposure using existing inhalation data. However, ATSDR is concerned that, based on the existing data for this exposure duration, it is not clear if the most sensitive end point for oral exposure is the same as that for inhalation exposure. Therefore, the Agency believes it is prudent not to consider it a priority to conduct a PBPK study to obtain the oral data at this time pending evaluation of additional information. This is reflected in Table 1 from which this priority data need has been deleted.

Update of Activities in the SSARP

An update of the activities associated with the mechanisms for implementing the ATSDR Substance-Specific Applied Research Program (SSARP) is discussed below.

A. TSCA/FIFRA

In developing and implementing the SSARP, ATSDR, NIEHS/NTP, and EPA have identified a subset of priority data needs for substances of mutual interest to the federal programs. These priority data needs are being addressed through a program of toxicological testing under TSCA according to established procedures and guidelines. On several occasions when ATSDR identified priority data needs for oral exposure, other agencies needed inhalation data. In response, ATSDR considers proposals to conduct inhalation studies in conjunction with physiologically based pharmacokinetic (PBPK) studies in lieu of oral studies. ATSDR expects that inhalation data derived from these studies can be used with PBPK modeling to address its oral toxicity priority data needs. Currently, an EPA/ATSDR test rule, under development, includes eight ATSDR substances, *i.e.*, benzene, chloroethane, cyanide (hydrogen cyanide and sodium cyanide), methylene chloride, tetrachloroethylene, toluene and trichloroethylene, and addresses 13 ATSDR priority data needs (Table 2). The test rule is presently undergoing ATSDR and EPA final review and is anticipated to be available for public comment in Spring 2006.

At least seven metals included in the ATSDR's SSARP (arsenic, beryllium, chromium, manganese, mercury, nickel, and selenium, associated with 21 priority data needs) (Table 2) have been forwarded to EPA through TASARC for toxicity testing. The EPA is currently developing a risk assessment framework for metals. Once the framework has been adopted, the EPA will solicit testing proposals for these metals and pursue appropriate testing mechanisms at a later date.

B. Private-Sector Voluntarism

As part of the Substance-Specific Applied Research Program (SSARP), ATSDR announced a set of proposed procedures for conducting voluntary research in the **Federal Register** (57 FR 4758) on February 7, 1992. Revisions based on public comments were published on November 16, 1992 (57 FR 54160). Private-sector organizations are encouraged to volunteer to conduct research to fill specific priority data needs at no expense to ATSDR. All study protocols and final reports are subjected to ATSDR's external peer review, and ATSDR accepts the study results based on the peer reviewers' recommendation and the industry groups' satisfactory response to the reviewers' comments.

To date, ATSDR has established memoranda of understanding with four industry groups. Through the voluntary research efforts of these organizations, at least 15 research needs (12 priority data needs and 3 data needs) for methylene chloride, tetrachloroethylene (perchloroethylene), trichloroethylene, polychlorinated biphenyl compounds [PCBs], and vinyl chloride have been or are being filled (Table 2).

Industry groups which conducted studies under the Voluntary Research Program include: *The American Chemistry Council (ACC*) [formerly the Chemical Manufacturers Association (CMA)] ATSDR accepted the ACC studies ''Vinyl chloride: Combined inhalation two-generation reproduction and developmental toxicity study in CD rats.''

General Electric Company (GE)

GE conducted studies on polychlorinated biphenyls including ''An assessment of the chronic toxicity and oncogenicity of Aroclors 1016, 1242, 1254, and 1260 administered in diet to rats,'' ''PCB congener analyses,'' and ''Metabolite detection as a tool for determining naturally occurring aerobic PCB biodegradation.'' Although these studies do not specifically address ATSDR's *priority* data needs for PCBs, they do address other Agency research needs for these substances.

Halogenated Solvents Industry Alliance, Inc. (HSIA)

To date, ATSDR has entered into five MOUs with HSIA to conduct studies to fill priority data needs for methylene chloride, tetrachloroethylene and trichloroethylene. In addition, in 2002, HSIA signed a letter of agreement with ATSDR stating that HSIA volunteers to

conduct studies to fill ATSDR's remaining priority data needs for tetrachloroethylene (perchloroethylene) and trichloroethylene. These studies are being done in conjunction with the EPA/ATSDR test rule and EPA's Voluntary Children's Chemical Evaluation Program. In some cases, HSIA first conducted a study via inhalation which was followed by route extrapolation via PBPK modeling to obtain data for oral exposure. This is because, for specific chemicals, EPA requires inhalation data while ATSDR has determined that ingestion of contaminated environmental media is the primary exposure route at hazardous waste sites.

HSIA studies accepted by ATSDR include: Addressing priority data needs for methylene chloride with physiologically based pharmacokinetic modeling'' which evaluates acute- and subchronic-duration toxicity and developmental toxicity via oral exposure.

''Methylene chloride: 28 day inhalation toxicity study in the rat to assess potential immunotoxicity.''

''Immunotoxic potential of orally administered dichloromethane from immunotoxicty studies conducted by the inhalation route.'' (PBPK modeling)

''Trichloroethylene: Inhalation developmental toxicity study in CD rats.'' HSIA will conduct PBPK modeling to obtain data for oral exposure based on the inhalation data.

''Trichloroethylene (TCE): Immunotoxicity potential in CD rats following a 4-week vapor inhalation exposure.'' The final report of the study is undergoing ATSDR's external peer review. Pending ATSDR's acceptance of the inhalation study, HSIA will conduct PBPK modeling to obtain data for oral exposure based on the inhalation data.

''Perchloroethylene: Study of effects on embryo-fetal development in CD rats by inhalation administration.'' HSIA will conduct PBPK modeling to obtain data for oral exposure based on the inhalation data.

Electric Power Research Institute, Inc. (EPRI)

In addition to the substance-specific MOUs described above, ATSDR also signed an MOU with EPRI to conduct a study ''Validation of test methods for assessing neurodevelopment in children.'' In this particular case, ATSDR and three other federal agencies (the Food and Drug Administration, EPA, and NIEHS) were also funding partners.

C. CERCLA-Funded Research (Minority Health Professions Foundation Research Program)

During FY 1992, ATSDR announced a $4 million cooperative agreement program with the Minority Health Professions Foundation (MHPF) to support substance-specific investigations. A not-for-profit Internal Revenue Code 501(c)(3) organization, the MHPF comprises 11 minority health professions schools at historically black colleges and universities. The MHPF mission is to research health problems that disproportionately affect poor and minority citizens. The purpose of the cooperative agreement was to address substance-specific data needs for priority hazardous substances identified by ATSDR. In addition, the agreement strengthened the environmental health research opportunities for scientists and students at MHPF member institutions and enhanced existing disciplinary capacities to conduct research in toxicology and environmental health. The MHPF published a report, ''Environmental Health and Toxicology Research Program: Meeting Environmental Health Challenges Through Research, Education, and Service,'' that describes the research findings and other successes from the first 5 years of the program.

In the first five year project period that concluded during FY 1997, nine priority data needs for 21 priority hazardous substances and 22 other research needs for these and other substances were addressed. Research initiated in the second 5-year project period included studies to address 10 additional priority data needs for chlordane, di-n-butyl phthalate, lead, manganese, the polycylic aromatic hydrocarbons (PAHs), zinc, and eight other research needs. To date, 14 priority data needs have been filled through this cooperative agreement (Table 1).

During 2003, ATSDR announced a new five year cooperative agreement program with the MHPF. The purpose of the program is to apply findings from the previous ten year environmental health and Toxicology Research Program and to improve public health and environmental medicine in low-income and minority communities. The new program builds on earlier efforts and expands the Program's public environmental health impact on affected communities. Activities across the following four research and environmental public health focus areas were funded to initiate this new program: substance-specific toxicology research, environmental exposure assessment, community-based environmental health education, and environmental health education for primary-care providers. No additional priority data needs are being addressed under this new program.

To date, Program research findings and other activities have resulted in the publication of more than 50 manuscripts in peer-reviewed journals. The institutions which have received awards and their respective studies are listed in Table 2.

D. National Toxicology Program (NTP)

Section 104(i)(5) of CERCLA directs the administrator of ATSDR (in consultation with the administrator of EPA and agencies and programs of the Public Health Service) to assess whether adequate information on the health effects of priority hazardous substances found at NPL sites is available. Where adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects (and techniques for developing methods to determine such health effects).

ATSDR continues to collaborate with NTP to address priority data needs of mutual interest. Chemicals for which NTP has conducted studies (or is in the process of conducting studies) to fill ATSDR's priority data needs include carbon tetrachloride, 1,1-dichloroethene, di-n-butyl phthalate, disulfoton, and heptachlor (Table 2).

E. Great Lakes Human Health Effects Research Program

Some of the priority data needs identified in the SSARP have been independently identified as research needs through the ATSDR Great Lakes Human Health Effects Research Program, a separate research program.

In support of the Great Lakes Critical Programs Act of 1990, ATSDR announced in Fiscal Year 1992 the availability of $2 million for a grant program to conduct research on the potential for short- and long-term adverse health effects from consumption of contaminated fish from the Great Lakes basin. Research undertaken through this program is intended to build on and amplify the results of past and ongoing fish consumption research in the Great Lakes basin. The ATSDR-supported research projects focus on known high-risk populations to define further the human health consequences of exposure to persistent toxic substances (PTSs) identified in the Great Lakes basin. These at-risk populations include sport anglers; African

Americans, Asians and other non-English speaking populations; pregnant women; fetuses, nursing infants, and children of mothers who consume contaminated Great Lakes sport fish; the elderly, and the urban poor. To date, the research activities of the ATSDR Great Lakes Human Health Effects Research Program have resulted in 70 publications in peer-reviewed journals.

Currently, 14 priority data needs for 24 priority hazardous substances (including 15 PAHs) identified in the SSARP are being addressed through this program. The institutions which have received awards and their respective studies are listed in Table 2.

F. Other ATSDR Programs

In its role as a public health agency addressing environmental health, ATSDR may collect human data to validate substance-specific exposure and toxicity findings. The need for additional information on levels of contaminants in humans has been identified, and remains as a priority data need for 59 of the 60 priority substances (Table 1). In some cases, ATSDR anticipates obtaining this information through exposure and health effects studies, and through establishing and using substance-specific subregistries of people within the Agency's National Exposure Registry who have potentially been exposed to these substances. Regarding the priority data need for exposure subregistries, the list of the 60 priority hazardous substances in the SSARP was forwarded to ATSDR's Division of Health Studies for consideration as potential candidates for subregistries of exposed persons, based on criteria described in its 1994 document, ''National Exposure Registry: Policies and Procedures Manual (Revised),'' Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia, NTIS Publication No. PB95–154571. Currently, ATSDR has established exposure subregistries for benzene, dioxin, 1,1,1-trichloroethane (not included in the SSARP), trichloroethylene, and tremolite asbestos.

G. Conclusion

The results of the research conducted via the SSARP are expected to provide information necessary to improve the database used to conduct comprehensive public health assessments of populations living near hazardous waste sites. The information will enable the Agency to establish linkages between levels of contaminants in the environment and levels in human tissue and organs associated with adverse health effects, ultimately helping to determine methods for interdicting exposure and mitigating toxicity. This program will also provide data that can be generalized to other substances or areas of science, including risk assessment of chemicals, thus creating a scientific information base for addressing a broader range of data needs. The Agency plans to provide an update on the status of this research program approximately every three years or sooner, as needed.

Dated: November 17, 2005.

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TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
Aldrin/Dieldrin	1A	Dose-response data in animals for intermediate-duration oral exposure.		Filled	An MRL was derived in the 2000 updated ATSDR toxicological profile.
	1B	Bioavailability from soil.			
	1C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			This priority data need, previously addressed in a study in the Great Lakes Research Program, is no longer investigated in that study.
	1D	Potential candidate for subregistry of exposed persons.	ATSDR.		
Arsenic	2A	Comparative toxicokinetic studies to determine if an appropriate animal species can be identified.	EPA.		
	2B	Half-lives in surface water, groundwater.	EPA.		
	2C	Bioavailability from soil	EPA.		
	2D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes	Filled	In addition to the data from the Great Lakes Research Program, background level data are available in ATSDR's 1993 toxicological profile, and at least seven ATSDR studies that evaluated urine arsenic levels and potential adverse health effects are available. Also, additional studies are available in ATSDR's 2000 updated toxicological profile.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
Asbestos	3A	Epidemiologic studies of individuals occupationally exposed to asbestos levels lower than those experienced before the institution of current occupational standards governing the use of asbestos, but higher than current levels in the general population. These studies should be performed in conjunction with the immunotoxicity studies.			
	3B	Immunotoxicity studies of individuals occupationally exposed to asbestos.			
	3C	Development of human and rat lung retention models to aid in extrapolating between rat and human data.			
	3D	Improved analytical methods for screening samples and determining the chemical structure of asbestos fibers. Also, techniques are needed to normalize studies in which different analytical methods were employed.			
	3E	Exposure levels, fiber size distribution, and asbestos fiber type in areas with natural geologic deposits of friable asbestos and at hazardous waste sites. Also, techniques for estimating air levels of asbestos from soil concentrations and activity scenarios.			
	3F	Exposure levels in humans living near hazardous waste sites and in other populations, such as humans living in areas with naturally high levels of friable asbestos.			
	3G	Potential candidate for subregistry of exposed persons.	ATSDR	Filled	ATSDR established registry to follow the health of people who were exposed to asbestos in Libby, Montana. The name of the registry is the Tremolite Asbestos Registry (TAR).
Benzene	4A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include an extended reproductive organ histopathology.	EPA		Reproductive toxicity study is the only component of this PDN that is included in the EPA/ATSDR test rule.
	4B	Prenatal developmental toxicity study via oral exposure.	EPA		Previously planned study in the MHPF Research Program to address this priority data need was canceled.
	4C	Neurotoxicology battery of tests via oral exposure.	EPA.		
	4D	Epidemiologic studies on the health effects of benzene (Special emphasis end points include immunotoxicity).		Filled	Based on an evaluation of the data in ATSDR's 1997 updated toxicological profile. ATSDR will continue to evaluate new data as they become available to determine if additional studies are needed.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	4E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations are available (Ashley *et al.* 1992, 1994; Needham *et al.* 1995), and at least one ATSDR study that evaluated blood benzene levels and potential adverse health effects is available. ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
Benzidine	5A	Dose-response data for acute- and intermediate-duration exposure via the oral route (the study of intermediate-duration exposure should include evaluation of reproductive and endocrine organ histopathology, lymphoid tissues histopathology as well as examination of relevant blood components, and nervous system histopathology).			
	5B	Exposure levels in humans living near hazardous waste sites.			
	5C	Exposure levels in children.			
	5D	Potential candidate for subregistry of exposed persons.	ATSDR.		
Beryllium	6A	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.	EPA.		
	6B	Prenatal developmental toxicity study via inhalation exposure.	EPA.		
	6C	Environmental fate in air; factors affecting bioavailability in air.	EPA.		
	6D	Analytical methods to determine environmental speciation.	.....	Filled	Based on an evaluation of the data in ATSDR's 2000 updated toxicological profile.
	6E	Immunotoxicology battery of tests following oral exposure.	EPA.		
	6F	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in urine are available (Paschal *et al.* 1998, CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	6G	Exposure levels in children	.....	Filled	Reference range concentrations in urine are available (CDC 2005).
	6H	Potential candidate for subregistry of exposed persons.	ATSDR.		
Cadmium	7A	Analytical methods for biological tissues and fluids and environmental media.	.....	Filled	Based on an evaluation of the data in ATSDR's 1999 updated toxicological profile.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	7B	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, reference range concentrations in blood and urine are available (CDC 2005), and at least nine ATSDR studies that evaluated blood and urine cadmium levels and potential adverse health effects are available.
	7C	Exposure levels in children	.....	Filled	Reference range concentrations in blood and urine are available (CDC 2005).
Carbon tetrachloride	8A	Dose-response data in animals for chronic oral exposure. The study should include extended reproductive organ and nervous tissue histopathology.			
	8B	Immunotoxicology battery of tests via oral exposure.	NTP	Filled	NTP dose-finding study and one study in ATSDR's 1994 updated toxicological profile addressed the priority data need.
	8C	Half-life in soil	.....	Filled	One study in ATSDR's 1994 updated toxicological profile provided information on half-life in soil.
	8D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in blood are available (Ashley *et al.* 1992, 1994; Needham *et al.* 1995). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	8E	Potential candidate for subregistry of exposed persons.	ATSDR.		
Chlordane	9A	Oral multigenerational studies to evaluate reproductive toxicity.	MHPF	Filled	Availability of studies in the MHPF Research Program.
	9B	Bioavailability studies following ingestion of contaminated media.			
	9C	Exposure levels in humans (adults) living near hazardous waste sites and other populations potentially exposed to chlordane.	.....	Filled	Reference range concentrations in serum are available (CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	9D	Exposure levels in children	.....	Filled	Reference range concentrations in serum are available (CDC 2005).
	9E	Potential candidate for subregistry of exposed persons.	ATSDR.		
Chlorinated dibenzo-p-dioxins (CDDs).	10A	Studies via oral exposure designed to assess childhood susceptibility.			

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	10B	Comparative toxicokinetic studies examining the relative absorption of CDDs across exposure routes and the relative contribution of each exposure route to total body burdens.			
	10C	Exposure levels in humans (adults) living near hazardous waste sites.	.....	Filled	Reference range concentrations in serum are available (CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	10D	Exposure levels in children	.....	Filled	Reference range concentrations in serum are available (CDC 2005).
Chloroethane	11A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an evaluation of immune and nervous system tissues, and extended reproductive organ histopathology.	EPA.		
	11B	Dose-response data in animals for chronic inhalation exposures. The study should include an evaluation of nervous system tissues.	EPA.		
	11C	Potential candidate for subregistry of exposed persons.	ATSDR.		
Chloroform	12A	Dose-response data in animals for intermediate-duration oral exposure.	.....	Filled	An MRL was derived in ATSDR's 1997 updated toxicological profile.
	12B	Epidemiologic studies on the health effects of chloroform (Special emphasis end points include cancer, neurotoxicity, reproductive and developmental toxicity, hepatotoxicity, and renal toxicity).	.....	Filled	Based on an evaluation of the data in ATSDR's 1997 updated toxicological profile. ATSDR will continue to evaluate new data as they become available to determined if additional studies are needed.
	12C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in blood are available (Ashley *et al.* 1992, 1994; and Needham *et al.* 1995). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	12D	Potential candidate for subregistry of exposed persons.	ATSDR.		
Chromium	13A	Dose-response data in animals for acute-duration exposure to chromium (VI) and (III) via oral exposure and for intermediate-duration exposure to chromium (VI) via oral exposure.	EPA.		
	13B	Multigeneration reproductive toxicity study via oral exposure to chromium (III) and (VI).	EPA.		

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	13C	Immunotoxicology battery of tests following oral exposure to chromium (III) and (VI).	EPA.		
	13D	Prenatal developmental toxicity study via oral exposure to chromium (III) and (VI).	EPA.		
	13E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, reference range concentrations in urine are available (Paschal *et al.* 1998). Also, at least two ATSDR studies that evaluated urine chromium levels and potential adverse health effects are available.
Cyanide	14A	Dose-response data in animals for acute- and intermediate-duration exposures via inhalation. The subchronic study should include extended reproductive organ histopathology and evaluation of neurobehavioral and neuropathological end points.	EPA.		
	14B	Prenatal developmental toxicity study via oral exposure.	EPA.		
	14C	Evaluation of the environmental fate of cyanide in soil.	.....	Filled	A study addressing the priority data need was submitted by industry to EPA in response to EPA's solicitation for proposals for test rule making. Scientists from EPA and ATSDR reviewed the study and considered that this research need is no longer a priority.
	14D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	14E	Potential candidate for subregistry of exposed persons.	ATSDR.		
1,2-dibromo-3-chloropropane	15A	Dose-response data in animals for acute-duration exposure via the oral route (including reproductive organ histopathology).			
	15B	Dose-response data in animals for chronic-duration exposure via the oral route (including reproductive organ histopathology).			
	15C	Prenatal developmental toxicity study via oral exposure.			
	15D	Immunotoxicology testing battery via oral exposure.	.....	.....	Previously planned study in the MHPF Research Program to address this priority data need was canceled.
	15E	Neurotoxicology testing battery via oral exposure.	.....	.....	Previously planned study in the MHPF Research Program to address this priority data need was canceled.
	15F	Exposure levels in humans living near hazardous waste sites and other exposed populations, such as exposed workers.			
	15G	Potential candidate for subregistry of exposed persons.	ATSDR.		

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
1,2-Dibromoethane	16A	Dose-response data in animals for acute- and intermediate-duration exposure by the oral route (the study of intermediate-duration exposure should include evaluation of neuropathology and observation for overt signs of neurotoxicity).			
	16B	Multigeneration reproductive toxicity studies via oral exposure.			
	16C	Developmental toxicity studies via oral exposure.			
	16D	Immunotoxicity battery studies via oral exposure.			
	16E	Exposure levels in humans living near hazardous waste sites and in other populations, such as workers exposed to 1, 2-dibromoethane.			
	16F	Exposure levels in children.			
	16G	Potential candidate for subregistry of exposed persons.	ATSDR.		
1,2-Dichloroethane	17A	Dose-response data in animals for acute-duration (14-day) exposure by the inhalation route, including a comparison of young and adult animals.			
	17B	Dose-response data in animals for acute-duration (14-day) exposure by the oral route, including a comparison of young and adult animals.			
	17C	Dose-response data in animals for intermediate-duration exposure by the inhalation route (the study should be performed in conjunction with the neurotoxicology battery of tests).			
	17D	Neurotoxicology battery of tests following inhalation exposure.			
	17E	Neurotoxicology battery of tests following oral exposure.			
	17F	Dose-response data in animals for chronic-duration exposure by the oral route.			
	17G	Prenatal developmental toxicity data for inhalation exposure (assessment of developmental cardiotoxicity and neurotoxicity).			
	17H	Prenatal developmental toxicity data for oral exposure (assessment of developmental cardiotoxicity and neurotoxicity).			
	17I	Additional analyses and studies for comparative toxicokinetics across species, ages, routes, and durations.			
	17J	Children's susceptibility.			
	17K	Exposure levels in humans living near hazardous waste sites.			
	17L	Exposure levels in children.			
	17M	Potential candidate for subregistry of exposed persons.	ATSDR.		
1,1-Dichloroethene	18A	Dose-response data in animals for acute-duration exposure by the inhalation route.	NTP	Filled	Availability of ongoing NTP study.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	18B	Dose-response data in animals for chronic-duration exposure by the inhalation route.	NTP	Filled	Availability of ongoing NTP study.
	18C	Dose-response data in animals for acute- and intermediate-duration exposure by the oral route.			
	18D	Carcinogenicity studies in two species following inhalation exposure.			
	18E	Reproductive toxicity studies assessing male and female end points following inhalation exposure.			
	18F	Prenatal developmental toxicity studies following oral exposure.			
	18G	Immunotoxicology battery of tests following oral exposure.			
	18H	Battery of neurobehavioral tests following inhalation exposure.			
	18I	Children's susceptibility.			
	18J	Exposure levels in humans living near hazardous waste sites.			
	18K	Exposure levels in children.			
	18L	Potential candidate for subregistry of exposed persons.	ATSDR.		
DDT	19A	Dose-response data in animals for chronic-duration oral exposure.			
	19B	Comparative toxicokinetic study (across routes/species).			
	19C	Bioavailability and bioaccumulation from soil.			
	19D	Epidemiologic studies on the health effects of DDT, DDD, and DDE (Special emphasis end points include immunotoxicity, and reproductive and developmental toxicity).	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, multiple studies in ATSDR's 2000 updated toxicological profile are available.
	19E	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, reference range concentrations in serum are available (CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	19F	Exposure levels in children	.....	Filled	Reference range concentrations in serum are available (CDC 2005).
	19G	Potential candidate for subregistry of exposed persons.	ATSDR.		
Di (2-ethylhexyl) phthalate	20A	Epidemiologic studies on the health effects of DEHP (Special emphasis end points include cancer).			

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	20B	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathologic evaluation of the immunologic and neurologic systems.	.....	.....	This research need remains as a priority data need because the previously developed MRL for acute-duration (1993 toxicological profile) was withdrawn. However, a new MRL for intermediate-duration was derived in ATSDR's 2002 updated Toxicological Profile. Therefore, this priority data need is considered partially filled because additional adequate acute-duration data for deriving an MRL are still lacking.
	20C	Multigeneration reproductive toxicity study via oral exposure.	.....	.....	This research need is reassigned as a priority data need based on an evaluation of the data in ATSDR's 2002 updated toxicological profile. Also, the NTP Center for the Evaluation of Risks to Human Reproduction Expert Panel Report (October 2000) has identified critical data needs for reproductive toxicity.
	20D	Comparative toxicokinetic studies (Studies designed to examine how primates metabolize and distribute DEHP as compared with rodents via oral exposure).	.....	Filled	The existing database provides adequate information to fill this priority data need based on ATSDR's reevaluation of the published data.
	20E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	20F	Potential candidate for subregistry of exposed persons.	ATSDR.		
Di-n-butyl phthalate	21A	Dose-response data in animals for acute-duration exposure via the oral route.	NTP	Filled	Availability of an NTP study.
	21B	Dose-response data in animals for chronic-duration exposure via the oral route.			
	21C	Carcinogenicity studies via oral exposure.			
	21D	In vivo genotoxicity studies	MHPF	Filled	Availability of a study in the MHPF Research Program.
	21E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	21F	Environmental fate of di-n-butyl phthalate in environmental media.			
	21G	Bioavailability in contaminated environmental media near hazardous waste sites.			
	21H	Potential candidate for subregistry of exposed persons.	ATSDR.		
Disulfoton	22A	Immunotoxicology testing battery following oral exposure.	NTP	Filled	Availability of ongoing NTP study.
	22B	Exposure levels of disulfoton in tissues/fluids for populations living near hazardous waste sites and other populations, such as exposed workers.			
	22C	Disulfoton should be considered as a potential candidate for a subregistry of exposed persons.	ATSDR.		

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
Endosulfan (α, β, and sulfate)	23A	Acute-duration oral exposure studies.			
	23B	Data on sensitive neurologic end point following oral exposure.			
	23C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	23D	Data on the bioavailability of endosulfan from soil.			
	23E	Potential candidate for subregistry of exposed persons.	ATSDR.		
Endrin/endrin aldehyde	24A	Dose-response animal data for acute oral exposure to endrin.			
	24B	Multigeneration reproductive toxicity studies via oral exposure to endrin.			
	24C	Accurately describe the toxicokinetics of endrin and its degradation products and identify the animal species to be used as the most appropriate model for human exposure.			
	24D	Exposure levels for endrin and its degradation products in humans living near hazardous waste sites.			
	24E	Accurately describe the environmental fate of endrin, including environmental breakdown products and rates, media half-lives, and chemical and physical properties of the breakdown products that help predict mobility and volatility.			
	24F	Potential candidate for subregistry of exposed persons.	ATSDR.		
Ethylbenzene	25A	Dose-response data for acute-duration exposure by the inhalation route.			
	25B	Dose-response data for chronic-duration exposure by the inhalation route.			
	25C	Dose-response data for acute- and intermediate-duration exposure by the oral route; the study of intermediate-duration exposure should include an evaluation of clinical signs of neurotoxicity and histopathology of reproductive organs, endocrine glands, and nervous system.			
	25D	Multigeneration toxicity study examining reproductive end points and indicators of endocrine disruption following inhalation exposure.			
	25E	Prenatal developmental study with continued assessment of offspring during postnatal development following oral exposure.			
	25F	Studies for comparative toxicokinetics.			
	25G	Exposure levels in humans living near hazardous waste sites.			
	25H	Exposure levels in children.			

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	25I	Potential candidate for subregistry of exposed persons.	ATSDR.		
Heptachlor/heptachlor epoxide	26A	Dose-response animal data for acute- and intermediate-duration oral exposures, including immunopathology.			
	26B	Multigeneration reproductive toxicity studies via the oral route of exposure.	NTP	Filled	Availability of publication "The effects of perinatal/juvenile heptachlor exposure on adult immune and reproductive system function in rats" by Smialowicz et al. (2001), Toxicological Sciences 61:164–175.
	26C	Prenatal developmental toxicity studies via the oral route of exposure.		Filled	Based on ATSDR's review of the literature, i.e., Smialowicz et al. (2001), Toxicological Sciences 61:164–175 and Moser et al. (2001) Toxicological Sciences 60 (2):315–326.
	26D	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.		Filled	Reference range concentrations in serum are available (CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	26E	Exposure levels in children		Filled	Reference range concentrations in serum are available (CDC 2005).
	26F	Bioavailability from contaminated air, water, and soil and bioaccumulation potential.			
	26G	Potential candidate for subregistry of exposed persons.	ATSDR.		
Hexachlorobutadiene	27A	Dose-response data in animals for acute-duration exposure via the oral route.			
	27B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	27C	Environmental fate studies that determine the extent to which hexachlorobutadiene volatilizes from soil, and studies that determine the reactions and rates which drive degradation in soil.			
	27D	Bioavailability studies in soil and plants.			
	27E	Potential candidate for subregistry of exposed persons.	ATSDR.		
Hexachlorocyclohexane (α, β and γ).	28A	Dose-response data for chronic-duration oral exposure.		Filled	An MRL was derived in ATSDR's 1999 updated toxicological profile.
	28B	Mechanistic studies on the neurotoxicity, hepatotoxicity, reproductive toxicity, and immunotoxicity of hexachlorocyclohexane.			

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	28C	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in serum are available (CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	28D	Exposure levels in children	.....	Filled	Reference range concentrations in serum are available (CDC 2005).
	28E	Potential candidate for subregistry of exposed persons.	ATSDR.		
Lead	29A	Mechanistic studies on the neurotoxic effects of lead.	MHPF	Filled	Multiple studies (at least 13 publications from the MHPF Research Program + numerous studies in ATSDR's 1999 updated toxicological profile) are available.
	29B	Analytical methods for tissue levels.	MHPF	Filled	A publication from the MHPF Research Program and numerous studies in ATSDR's 1999 toxicological profile are available.
	29C	Exposure levels in humans (adults) near hazardous waste sites and other populations, such as exposed workers.	MHPF ..... G. Lakes	Filled	In addition to the data from Great Lakes Research Program and MHPF Research Program, reference range concentrations in blood and urine are available (CDC 2005; Paschal et al. 1998), and at least 19 ATSDR studies that evaluated blood lead levels and potential adverse health effects are available.
	29D	Exposure levels in children	.....	Filled	Reference range concentrations in blood and urine are available (CDC 2005).
Manganese	30A	Dose-response data for acute- and intermediate-duration oral exposures (the subchronic study should include reproductive histopathology and an evaluation of immunologic parameters including manganese effects on plaque-forming cells (SRBC), surface markers (D4:D8 ratio), and delayed hypersensitivity reactions).	MHPF ..... EPA	Filled	Availability of studies in the MHPF Research Program.
	30B	Toxicokinetic studies on animals to investigate uptake and absorption, relative uptake of differing manganese compounds, metabolism of manganese, and interaction of manganese with other substances following oral exposure.	MHPF ..... EPA	Filled	Availability of studies in the MHPF Research Program.
	30C	Epidemiological studies on the health effects of manganese (Special emphasis end points include neurologic, reproductive, developmental, immunologic, and cancer).	.....	Filled	Based on an evaluation of the data in ATSDR's 2000 updated toxicological profile. ATSDR will continue to evaluate new data as they become available to determine if additional studies are needed.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	30D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	30E	Relative bioavailability of different manganese compounds and bioavailability of manganese from soil.	EPA.		
Mercury	31A	Multigeneration reproductive toxicity study via oral exposure.	MHPF	Filled	Availability of publications from the MHPF Research Program.
	31B	Dose-response data in animals from chronic-duration oral exposure.	.....	Filled	An MRL was derived in ATSDR's 1999 updated toxicological profile.
	31C	Immunotoxicology battery of tests via oral exposure.	EPA.		
	31D	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, background levels data are available in ATSDR's 1997 updated toxicological profile, and multiple ATSDR studies that evaluated blood, urine, hair mercury levels and potential adverse health effects are available. Also, reference range concentrations in blood and urine are available (CDC 2005).
	31E	Exposure levels in children	.....	Filled	Reference range concentrations in blood and urine are available (CDC 2005).
	31F	Potential candidate for subregistry of exposed persons.	ATSDR.		
Methoxychlor	32A	Evaluate neurologic effects after long-term, low-level oral exposure.	.....	Filled	Based on an evaluation of the data in ATSDR's 2000 updated toxicological profile.
	32B	Exposure levels of methoxychlor and primary metabolites in humans living near hazardous waste sites and those individuals with the potential to ingest it.			
	32C	Evaluate the fate, transport, and levels of the degradation products of methoxychlor in soil.			
	32D	Potential candidate for subregistry of exposed persons.	ATSDR.		
Methylene chloride	33A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include extended reproductive organ histopathology, neuropathology, and immunopathology.	EPA ..... Vol Res	Filled	ATSDR accepted HSIA's toxicity study for acute- and intermediate-duration exposure duration in February 1997. Also, ATSDR accepted HSIA's immunotoxicity study via inhalation in November 2000 and the oral data obtained via PBPK modeling conducted by HSIA based on the immunotoxicity data from the inhalation study. Neurotoxicity screening battery testing remains in the ATSDR/EPA test rule under development.
	33B	Prenatal developmental toxicity study via the oral route.	Vol Res	Filled	ATSDR accepted HSIA's study in February 1997.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	33C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in blood are available (Ashley *et al.* 1992, 1994; Needham *et al.* 1995). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	33D	Potential candidate for subregistry of exposed persons.	ATSDR.		
Nickel	34A	Epidemilogic studies on the health effects of nickel (Special emphasis end points include reproductive toxicity).	.....	Filled	Based on at least two relevant studies in ATSDR's 1997 updated toxicological profile. ATSDR will continue to evaluate new data as they become available to determine if additional studies are needed.
	34B	Prenatal development toxicity study via the oral route.	EPA	Filled	In ATSDR's 1997 updated toxicological profile, a study confirming the results of two previous studies is available.
	34C	Dose-response data in animals for acute- and intermediate-duration oral exposures.	EPA.		
	34D	Neurotoxicology battery of tests via oral exposure.	EPA.		
	34E	Bioavailability of nickel from soil ..	EPA.		
	34F	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	Based on availability of the data from the Great Lakes Research Program and an evaluation of ATSDR's 1997 updated toxicological profile.
	34G	Potential candidate for subregistry of exposed persons.	ATSDR.		
Pentachlorophenol	35A	Comparative toxicokinetic studies.			
	35B	Exposure levels in humans (adults) living near hazardous waste sites.	.....	Filled	Reference range concentrations in urine are available (CDC 2005). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	35C	Exposure levels in children	.....	Filled	Reference range concentrations in urine are available (CDC 2005).
	35D	Potential candidate for subregistry of exposed persons.	ATSDR.		
Polychlorinated biphenyls (PCBs)	36A	Dose-response data in animals for acute- and intermediate-duration oral exposure.	G. Lakes ..	.....	Although an MRL for intermediate-exposure duration was derived in ATSDR's 2000 updated toxicological profile, an MRL for acute-exposure duration is still lacking.
	36B	Biodegradation of PCBs in water; bioavailability of PCBs in air, water, and soil.			

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	36C	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.			
	36D	Epidemiologic studies on the health effects of PCBs (Special emphasis end points include immunotoxicity, gastrointestinal toxicity, liver toxicity, kidney toxicity, thyroid toxicity, and reproductive/developmental toxicity).	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, multiple studies in ATSDR's 2000 updated toxicological profile are available.
	36E	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, background levels data are available (ATSDR's 1997 updated toxicological profile, Needham *et al.* 1996, and CDC 2005). Also, multiple ATSDR studies that evaluated blood and breast milk PCB levels and potential adverse health effects are available.
	36F	Exposure levels in children	.....	Filled	Reference range concentrations in serum are available (CDC 2005).
	36G	Potential candidate for subregistry of exposed persons.	ATSDR.		
	36H [5]	Chronic toxicity and oncogenicity via oral exposure.	Vol Res	Filled	ATSDR accepted the final report of the GE study in October 1997.
	36I [5]	Aerobic PCB biodegradation in sediment.	Vol Res	Filled	ATSDR accepted the final report of the GE study in July 1999.
	36J [5]	PCB congener analysis	Vol Res .... G. Lakes	Filled	ATSDR accepted the final report of the GE study in October 1997. Also, data from the Great Lakes Research Program are available.
Polycyclic aromatic hydrocarbons (PAHs) (Includes 15 substances).	37A	Dose-response data in animals for intermediate-duration oral exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	MHPF	Filled	MRLs for four PAHs were derived in ATSDR's 1995 updated toxicological profile. A publication from the MHPF Research Program addressing this priority data need is available.
	37B	Prenatal developmental toxicity study via inhalation or oral exposure.	MHPF	Filled	Data from the MHPF Research Program including a publication are available.
	37C	Mechanistic studies on PAHs, on how mixtures of PAHs can influence the ultimate activation of PAHs, and on how PAHs affect rapidly proliferating tissues.	MHPF	Filled	In addition to publications from the MHPF Research Program, studies are available in ATSDR's 1995 updated toxicological profile.
	37D	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	MHPF	Filled	Data from the MHPF Research Program including one publication are available.
	37E	Epidemiologic studies on the health effects of PAHs (Special emphasis end points include cancer, dermal, hemolymphatic, and hepatic toxicity).	.....	Filled	Multiple studies in ATSDR's 1995 updated toxicological profile are available. ATSDR will continue to evaluate new data as they become available to determine if additional studies are needed.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	37F	Exposure levels in humans (adults) living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	Based on data from the Great Lakes Research Program and an evaluation of the ATSDR 1995 updated toxicological profile. Also, reference range concentrations in urine are available (CDC 2005). The Agency continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	37G	Exposure levels in children	.....	Filled	Reference range concentrations in urine are available (CDC 2005).
	37H	Potential candidate for subregistry of exposed persons.	ATSDR.		
Selenium	38A	Dose-response data in animals for acute-duration oral exposure.	EPA.		
	38B	Immunotoxicology battery of tests via oral exposure.	EPA.		
	38C	Epidemiologic studies on the health effects of selenium (Special emphasis end points include cancer, reproductive and developmental toxicity, hepatotoxicity, and adverse skin effects).	.....	Filled	Based on an evaluation of ATSDR's 2001 updated toxicological profile. ATSDR will continue to evaluate new data as they become available to determine if additional studies are needed.
	38D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G. Lakes ..	Filled	In addition to the data from the Great Lakes Research Program, reference range concentrations in serum are available (NHANES III). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	38E	Potential candidate for subregistry of exposed persons.	ATSDR.		
1,1,2,2-Tetrachloroethane	39A	Prenatal developmental toxicity study by the oral route.			
	39B	Immunotoxicity battery following oral exposure.			
	39C	Mammalian in vivo genotoxicity assays.			
	39D	Exposure levels in humans living near hazardous waste sites.			
	39E	Exposure levels in children.			
	39F	Potential candidate for subregistry of exposed persons.	ATSDR.		
Tetrachloroethylene	40A	Dose-response data in animals for acute-duration oral exposure, including neuropathology and demeanor, and immunopathology.	.....	Filled	An MRL was derived in the ATSDR 1997 updated toxicological profile.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	40B	Multigeneration reproductive toxicity study via oral exposure.	Vol Res	.....	HSIA's inhalation study was accepted by ATSDR and included in ATSDR's 1997 updated toxicological profile. However, ATSDR has identified ingestion of contaminated environmental media to be the primary exposure route for this chemical at waste sites. HSIA will obtain the oral data from the inhalation study by conducting PBPK modeling.
	40C	Dose-response data in animals for intermediate-duration oral exposure, including neuropathology, and immunopathology.	EPA. ..... Vol Res		HSIA will obtain oral data for intermediate-duration toxicity and neurotoxicity by PBPK modeling based on existing inhalation data. Also, it will conduct an inhalation immunotoxicity study, followed by PBPK modeling to obtain oral data.
	40D	Prenatal developmental toxicity study via oral exposure.	Vol Res	.....	HSIA's developmental toxicity study via inhalation was accepted by ATSDR. However, ATSDR has identified ingestion of contaminated environmental media to be the primary exposure route for this chemical at waste sites. HSIA will obtain the oral data from the inhalation study by conducting PBPK modeling.
	40E	Developmental neurotoxicity study via oral exposure.	EPA Vol Res.		
	40F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in blood are available (Ashley *et al.* 1992, 1994; Needham *et al.* 1995). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	40G	Potential candidate for subregistry of exposed persons.	ATSDR.		
Toluene	41A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathologic evaluation of the immune system.	.....	Filled	Availability of MRLs for acute- and intermediate-exposure durations in ATSDR's 2000 updated toxicological profile.
	41B	Comparative toxicokinetic studies (Characterization of absorption, distribution, and excretion via oral exposure).	.....	Filled	Based on evaluation of the data in ATSDR's 2000 updated toxicological profile.
	41C	Neurotoxicology battery of tests via oral exposure.	EPA ..... MHPF		A publication for acute exposure but not longer term exposure is available in the MHPF Research Program. Also, this priority data need is included in the EPA/ATSDR test rule.
	41D	Mechanism of toluene-induced neurotoxicity.	.....	Filled	Multiple studies in ATSDR's 1994 and 2000 updated toxicological profiles are available.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	41E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	.....	Filled	Reference range concentrations in blood are available (Ashley *et al.* 1992, 1994; Needham *et al.* 1995), and additional data in ATSDR's 2000 updated toxicological profile are available. ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
	41F	Potential candidate for subregistry of exposed persons.	ATSDR.		
Toxaphene	42A	Identify the long-term health consequences of exposure to environmental toxaphene via oral exposure.			
	42B	Conduct additional immunotoxicity studies for chronic-duration via oral route of exposure.			
	42C	Conduct additional neurotoxicity studies for chronic-duration via oral route of exposure.			
	42D	Exposure levels in humans living in areas near hazardous waste sites with toxaphene and in those individuals with the potential to ingest it.			
	42E	Potential candidate for subregistry of exposed persons.	ATSDR.		
Trichloroethylene	43A	Dose-response data in animals for acute-duration oral exposure.	.....	Filled	An MRL was derived in ATSDR's 1997 updated toxicological profile.
	43B	Neurotoxicology battery of tests via the oral route.	EPA MHPF ..... Vol Res	.....	A publication for acute exposure but not longer term exposure is available in the MHPF Research Program. Also, this priority data need is included in the EPA/ATSDR test rule and ATSDR's Voluntary Research Program.
	43C	Immunotoxicology battery of tests via oral route.	Vol Res	.....	HSIA has completed an inhalation immunotoxicity study which is undergoing ATSDR peer review. HSIA will obtain oral data via PBPK modeling based on the inhalation data.
	43D	Prenatal developmental toxicity study via oral exposure.	Vol Res	.....	ATSDR has accepted HSIA's final report for an inhalation developmental toxicity study. HSIA will use PBPK modeling to obtain data for oral exposure based on the results of its inhalation study.
	43E	Developmental neurotoxicity study via oral exposure.	EPA Vol Res		
	43F	Epidemiologic studies on the health effects of trichloroethylene (Special emphasis end points include cancer, hepatotoxicity, renal toxicity, developmental toxicity, and neurotoxicity).	.....	Filled	Based on evaluation of the data in ATSDR's 1997 updated toxicological profile. ATSDR will continue to evaluate new data as they become available to determine if additional studies are needed.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	43G	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.		Filled	Reference range concentrations in blood are available (Ashley *et al.* 1992, 1994; Needham *et al.* 1995). ATSDR acknowledges that reference concentration data can support exposure and health assessments at waste sites, but the Agency also continues to recognize the importance of collecting additional data on uniquely exposed populations at waste sites.
Vinyl chloride	44A	Dose-response data in animals for acute-duration inhalation exposure.		Filled	An MRL was derived in ATSDR's 1997 updated toxicological profile.
	44B	Multigeneration reproductive toxicity study via inhalation.	Vol Res	Filled	ATSDR accepted the final report of ACC's study in November 2000.
	44C	Dose-response data in animals for chronic-duration inhalation exposure.			
	44D	Mitigation of vinyl chloride-induced toxicity.			
	44E	Prenatal developmental toxicity study via inhalation.	Vol Res	Filled	ATSDR accepted the final report of ACC's study in November 2000.
	44F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			
	44G	Potential candidate for subregistry of exposed persons.	ATSDR.		
Xylenes	45A	Dose-response data for chronic-duration exposure by the oral route. This study should be done in conjunction with the neurotoxicology battery of tests.			
	45B	Neurotoxicology battery of tests following oral exposure.			
	45C	Two-generation reproductive study following oral exposure.			
	45D	Developmental toxicity study that includes neurodevelopmental end points following oral exposure.			
	45E	Exposure levels in humans living near hazardous waste sites.			
	45F	Exposure levels in children.			
	45G	Potential candidate for subregistry of exposed persons.	ATSDR.		
Zinc	46A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathologic evaluation of the immunologic and neurologic systems.	MHPF	Filled	Availability of ongoing studies in the MHPF Research Program.
	46B	Multigeneration reproductive toxicity study via oral exposure.	MHPF	Filled	Availability of ongoing studies in the MHPF Research Program.
	46C	Carcinogenicity testing (2-year bioassay) via oral exposure.			
	46D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.			This priority data need, previously anticipated to be addressed under the voluntary research program, is not being investigated under any of the ATSDR research programs.

TABLE 1.—ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR 60 PRIORITY HAZARDOUS SUBSTANCES—Continued

Substances	PDN ID [1]	PDN description	Program [2]	Status change [3]	Comments [4]
	46E	Potential candidate for subregistry of exposed persons.	ATSDR.		

[1] Priority data need identification number.
[2] Programs addressing priority data needs. ATSDR = ATSDR's Division of Health Studies; EPA = U.S. Environmental Protection Agency; G. Lakes = Great Lakes Human Health Effects Research Program; MHPF = Minority Health Professions Foundation; NTP = National Toxicology Program; Vol Res = Voluntary research.
[3] PDN can be *filled* or remain unchanged based on reevaluation of the database using criteria developed by ATSDR.
[4] ACC = American Chemistry Council; Ashley *et al.* 1992 = Ashley DL, Bonin MA, Cardinali FL, *et al.* Anal Chem (1992) 64:1021–29; Ashley *et al.* 1994 = Ashley DL, Bonin MA, Cardinali FL *et al.*, Clin Chem (1994) 40/7:1401–4; ATSDR studies = Studies conducted by ATSDR's Division of Health Studies; GE = General Electric Company; HSIA = Halogenated Solvents Industry Alliance, Inc.; MHPF = Minority Health Professions Foundation; MRL = Minimal Risk Level; CDC 2005 = The third National Report on Human Exposure to Environmental Chemicals, prepared by the National Center for Environmental Health, Centers for Disease Control and Prevention, Atlanta, GA; Needham *et al.* 1995 = Needham LL, Hill RH Jr, Ashley DL, Pirkle JL, and Sampson EJ. Environ Health Perspect 103(Suppl 3):89–94; Needham *et al.* 1996 = Needham LL, Patterson DG Jr, Burse VW, Paschal DC, Turner WE, and Hill VW Jr. Toxicol Ind Health 12:507–513; NHANES III = The Third National Health and Nutrition Examination Survey, conducted by the National Center for Health Statistics, Centers for Disease Control and Prevention, Atlanta, GA; NTP = National Toxicology Program; Paschal *et al.* 1998 = Paschal DC, Ting BC, Morrow JC, *et al.* Environ Res, Section A 76: 53–59; PBPK modeling = physiologically based pharmacokinetic modeling; Toxicological profile = ATSDR's toxicological profiles for the Agency's priority hazardous substances.
[5] Not a priority data need.

TABLE 2.—GROUPS WHICH ARE ADDRESSING/HAVE ADDRESSED ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDNS)

Program	Firm, institution, agency, or consortium	Substance	PDN ID
Voluntarism	American Chemistry Council	Vinyl chloride	44B, 44E
	General Electric Company	PCBs	36H*, 36I*, 36J*
	Halogenated Solvents Industry Alliance, Inc.	Methylene chloride	33A, 33B
		Tetrachloroethylene	40B, 40C, 40D, 40E
		Trichloroethylene	43B, 43C, 43D, 43E
Minority Health Professions Foundation.	Florida A & M University	Lead	29A
	The King/Drew Medical Center of the Charles R. Drew University of Medicine and Science.	Lead	29B, 29C
	Meharry Medical College	PAHs	37A, 37B, 37C, 37D
	Morehouse School of Medicine	Lead	29C
	Texas Southern University	Di-n-butyl phthalate	21D
		Lead	29A
		Toluene	41C
		Trichloroethylene	43B
	Tuskegee University	Chlordane	9A
		Mercury	31A
		Zinc	46A, 46B
	Xavier University	Manganese	30A, 30B
		Zinc	46A
Great Lakes Human Health Effects Research Program.	Michigan State University	DDT/DDE	19D, 19E
		Lead	29C
		Mercury	31D
		PCBs	36D, 36E, 36J*
		Selenium	38D
	New York State Health Department	DDT/DDE	19E
		Lead	29C
		Mercury	31D
		PCBs	36D, 36E, 36J*
	State University of New York at Albany.	PCBs	36E
	State University of New York at Buffalo.	DDT/DDE	19D, 19E
		Lead	29C
		Mercury	31D
		PCBs	36D, 36E, 36J*
	State University of New York at Oswego.	DDT/DDE	19D, 19E
		Lead	29C
		Mercury	31D
		PCBs	36D, 36E, 36J*
	University of Illinois at Chicago	DDT/DDE	19D, 19E

TABLE 2.—GROUPS WHICH ARE ADDRESSING/HAVE ADDRESSED ATSDR'S SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDNs)—Continued

Program	Firm, institution, agency, or consortium	Substance	PDN ID
		Lead	29C
		Mercury	31D
		PCBs	36D, 36E, 36J*
	University of Illinois at Urbana-Champaign.	DDT/DDE	19D, 19E
		Lead	29C
		Mercury	31D
		PCBs	36D, 36E, 36J*
	University of Wisconsin-Milwaukee	DDT/DDE	19D, 19E
		Lead	29C
		Mercury	31D
		PCBs	36A, 36D, 36E, 36J*
		Selenium	38D
	Wisconsin Department of Health and Social Services—5 State Consortium.	Arsenic	2D
		Cadmium	7B
		Chromium	13E
		DDT/DDE	19D, 19E
		Lead	29C
		Mercury	31D
		Nickel	34F
		PAHs	37F
		PCBs	36D, 36E, 36J*
Environmental Protection Agency TSCA/FIFRA.	EPA/ATSDR Test Rule	Benzene	4A, 4B, 4C
		Chloroethane	11A, 11B
		Cyanide (hydrogen cyanide and sodium cyanide).	14A, 14B
		Methylene chloride	33A
		Tetrachloroethylene	40C, 40E
		Toluene	41C
		Trichloroethylene	43B, 43E
	Metals Testing Task Force (TASARC)	Arsenic	2A, 2B, 2C
		Beryllium	6A, 6B, 6C, 6E
		Chromium	13A, 13B, 13C, 13D
		Manganese	30A, 30B, 30E
		Mercury	31C
		Nickel	34B, 34C, 34D, 34E
		Selenium	38A, 38B
National Toxicology Program	National Institute of Environmental Health Sciences.	Carbon tetrachloride	8B
		1,1-dichloroethene	18A, 18B
		Di-n-butyl phthalate	21A
		Disulfoton	22A
		Heptachlor	26B

* Not priority data needs.

Editorial Note: FR Doc. 05–23361 was originally published at page 71506 in the issue of Tuesday, November 29, 2005. The corrected document is republished in its entirety, due to printing errors.

[FR Doc. R5–23361 Filed 12–12–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0556]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Assisted Reproductive Technology (ART) Program Reporting System—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires that each ART program shall annually report to the Secretary through the Centers for Disease Control and Prevention—(1) pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under this Act. The Act defines ART as all treatments and procedures that include the handling of human oocytes and sperm or embryos for the purpose of establishing a pregnancy.

The Centers for Disease Control and Prevention seeks to extend approval of a reporting system for the Assisted Reproductive Technology (ART) Program from the Office of Management and Budget (OMB) for a period of 3 years. The reporting system includes all ART cycles initiated by any of the approximately 400 ART programs in the United States, and covers the pregnancy outcome of each cycle as well as a number of data items deemed important to explain variability in success rates across ART programs and across individuals. An ART cycle is started when a woman begins taking medication to stimulate the ovaries to develop eggs or starts ovarian monitoring with the intent of having embryos transferred. Data will be collected through a Web-based data collection system, developed by Westat in consultation with CDC, that complies with FCSRCA requirements.

In developing the definition of pregnancy success rates and the list of data items to be reported, CDC has consulted with representatives of the Society for Assisted Reproductive Technology (SART), the American Society for Reproductive Medicine (ASRM), and RESOLVE, the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field. The average annual cost to each ART program responding to the survey, including data entry and validation, is estimated to be $6,720.

Estimated Annualized Burden Table

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
ART Programs (data entry)	*400	*288	37/60	71,040
ART Programs (selected for data validation)	**40	**83	23/60	1,273
Total				72,313

*Approximately 400 ART programs (respondents) reported data in 2002. The average number of ART cycles (responses) per ART program was 288.

**Approximately 10% of the ART programs are selected for validation. An average of 83 ART cycles per ART program were selected for validation in 2002.

Dated: December 7, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7258 Filed 12–12–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Disease Control and Prevention

[60Day–06–06AI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Metropolitan Atlanta Stillbirth Management Survey: Knowledge, Attitudes and Practice Patterns from Obstetricians, new collection, National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The U.S. Congress House Report 108–792 (joint conference report for the Fiscal Year 2005 omnibus appropriations bill) provides specific funding to devise a comprehensive strategy for expanding existing birth defects surveillance systems to incorporate surveillance data on all intrauterine fetal deaths of 20 or more week's gestation into the Metropolitan Atlanta Congenital Defects Program (MACDP). Stillbirth is largely an understudied adverse pregnancy outcome even though it accounts for nearly one half of all perinatal mortality. There is currently no nationally

accepted definition of what constitutes a stillbirth, and there are no universally recommended, standardized stillbirth evaluation protocols in use for the evaluation of fetal deaths. The proposed survey has been designed to evaluate and assess the knowledge, attitudes and practice management patterns of obstetricians in the metropolitan Atlanta area regarding stillbirths in general, as well as in their medical practice. This information will be used to identify prevailing deficiencies leading to incomplete and inaccurate reporting of data relative to stillbirths, and to develop targeted awareness and educational strategies for participating MACDP facilities. Ongoing, accurate and reliable population-based registries of stillbirths are essential for conducting epidemiologic studies on the causes of and risk factors for this pregnancy outcome. This survey will be mailed to randomly selected obstetricians whose practices serve residents of the 5 counties comprising metropolitan Atlanta. This survey will be conducted once and will take approximately 2–3 months to collect the data. NCBDDD is requesting OMB clearance for 1 (one) year. There is no cost to the survey respondents except for the time necessary to complete the survey.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents (type)	Respondents (number)	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Obstetricians	600	1	30/60	300
Total	600			300

Dated: December 7, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7260 Filed 12–12–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0479]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Butorphanol; Delta–9–tetrahydrocannabinol (Dronabinol); Gamma-Hydroxybutyric Acid; Ketamine; Khat; Tramadol; Zopiclone; Buprenorphine; Oripavine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of nine drug substances. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting comments is required by the Controlled Substances Act (CSA).

DATES: Submit written or electronic comments by January 12, 2006.

ADDRESSES: 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: James R. Hunter, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5563, e mail: *hunterj@cder.FDA.gov*.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary General of the United Nations and provide the Secretary General of the United Nations with information in support of its opinion.

The CSA (21 U.S.C. 811 *et seq.*) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that it has information that may justify adding a drug or other substances to one of the schedules of the convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of the Department of Health and Human Services (the Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that will be considered by HHS in its preparation of the scientific and medical evaluations of the drug or substance.

I. WHO Notification

The Secretary of HHS received the following notices from WHO:

Ref: C.L.29.2005

WHO Questionnaire for Collection of Information for Review of Dependence-Producing Psychoactive Substances

The WHO presents its compliments and has the pleasure of informing Member States and Associate Members that the Thirty-fourth Expert Committee on Drug Dependence will meet from March 28 to 31, 2006 to review the following substances:

1. Butorphanol (INN)
2. Dronabinol (INN)[1]
3. Gamma-hydroxybutyric acid
4. Ketamine (INN)
5. Khat (Catha edulis Forsk)
6. Tramadol (INN)
7. Zopiclone (INN)

As a follow-up for the thirty-third meeting of the Expert Committee on Drug Dependence, final decisions will be taken for buprenorphine (INN) and oripavine (INN).

One of the essential elements of the established review procedure is for the Secretariat to collect relevant information from Member States to prepare a Critical Review Report for submission to the Expert Committee on Drug Dependence. WHO invites Member States to collaborate, as in the past, in this process by providing pertinent information mentioned in the attached questionnaire concerning substances listed above.

Further clarification on any of the above items can be obtained from Quality Assurance and Safety: Medicines, Department of Medicines Policy and Standards, WHO, Geneva, to which replies should be sent not later than January 3, 2006.

WHO takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.

GENEVA, October 27, 2005

* * * * *

[1]Including its stereo-isomers.

If statistical information requested is not readily available, a brief descriptive answer would be appreciated.

Please attach copies of relevant study reports and other background information as appropriate.

* * * * *

1. BUTORPHANOL (INN)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused[2] in your country? (Yes/No/No Information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

4. IMPACT OF SCHEDULING

4.1 If butorphanol is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think the transfer will impact its medical availability?

2. DRONABINOL (INN) AND ITS STEREOISOMERS

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused in your country? (Yes/No/No information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

3. GAMMA-HYDROXYBUTYRIC ACID (GHB)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused in your country? (Yes/No/No information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

4. IMPACT OF TRANSFER TO SCHEDULE II or III OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, 1971, ON MEDICAL AVAILABILITY

4.1 If gamma-hydroxybutyric acid is transferred from Schedule IV of the Convention on Psychotropic Substances, 1971, to either Schedule II or III of the Convention on Psychotropic Substances, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think the transfer will impact its medical availability?

[2]In this questionnaire, ''abuse or misuse'' refers to use of the substance other than for medical or scientific purposes.

4. KETAMINE (INN)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused in your country? (Yes/No/No information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

4. IMPACT OF SCHEDULING

4.1 If ketamine is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think the transfer will impact its medical availability?

5. KHAT (CATHA EDULIS Forsk.)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused in your country? (Yes/No/No information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

4. IMPACT OF SCHEDULING

4.1 If khat is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think the transfer will impact its medical availability?

6. TRAMADOL (INN)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused in your country? (Yes/No/No information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

4. IMPACT OF SCHEDULING

4.1 If tramadol is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think the transfer will impact its medical availability?

7. ZOPICLONE (INN)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently registered as a medical product? (Yes/No)

If ''yes,'' since when (year of marketing)? 19_____

Please indicate trade name(s), dosage form(s) with strength(s) and indication(s):

Trade Name	Dosage Form	Strength(s)	Indication(s)

1.2 If the answer to 1.1 is ''no,'' is there other legitimate use of the substance? (Yes/No)

If ''yes,'' please describe the purpose of use.

1.3 If there is legitimate use of the substance, how is the substance supplied? (Imported/Manufactured in the country)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance abused or misused in your country? (Yes/No/No information)

2.2 If ''yes,'' any information on the extent of abuse?

2.3 Any information on the extent of public health or social problems associated with the abuse of the substance (statistics on cases of overdose deaths, dependence, etc.)?

3. ILLICIT ACTIVITIES INVOLVING THE SUBSTANCE

3.1 Any information on the nature and extent of illicit activities involving the substance (clandestine manufacture, smuggling, diversion, seizure, etc.)?

4. IMPACT OF SCHEDULING

4.1 If zopiclone is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think the transfer will impact its medical availability?

8. BUPRENORPHINE (INN)

1. IMPACT OF TRANSFER TO SCHEDULE I OF THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, ON MEDICAL AVAILABILITY

1.1 If buprenorphine is transferred from Schedule III of the Convention on Psychotropic Substances, 1971, to Schedule I of the Single Convention on Narcotic Drugs, 1961, do you think that its availability for medical use will be affected? (Yes/No)

1.2 If ''yes,'' how do you think the transfer will impact its medical availability?

II. Background

Butorphanol is classified as a synthetic opiate partial agonist analgesic. It is marketed in the United States for the management of pain as an injectable and as a nasal spray solution. It is controlled domestically in Schedule IV of the CSA and is not controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

Synthetic *delta*–9–tetrahydrocannabinol (*delta*–9–THC), or dronabinol, is the active component of the drug product Marinol, which is marketed in the United States as an antiemetic in the setting of cancer chemotherapy and for treatment of AIDS wasting syndrome. Marinol is currently controlled in Schedule III of the CSA, and the drug substance dronabinol (which is the synthetic equivalent of the natural active component of marijuana, *delta*–9–THC) is controlled in Schedule I of the CSA. The drug substance dronabinol, including its isomers, is controlled internationally in Schedule II of the Psychotropic Convention.

Gamma-hydroxybutyric acid (GHB) is classified as a central nervous system depressant. In 2002, FDA approved a GHB-containing product, Xyrem, for the treatment of cataplexy associated with narcolepsy. Xyrem was approved under the regulations in 21 CFR part 314, subpart H (21 CFR 314.520), and the product labeling contained a comprehensive risk management program, which includes restricted distribution of the drug through a central pharmacy. Xyrem is controlled domestically in Schedule III of the CSA, while bulk GHB and all other material containing GHB is controlled in Schedule I. In addition, illicit use of Xyrem is subject to Schedule I penalties of the CSA. GHB is controlled internationally in Schedule IV of the Psychotropic Convention.

Ketamine is classified as a rapid-acting general anesthetic agent used for short diagnostic and surgical procedures that do not require skeletal muscle relaxation. It is marketed in the United States as an injectable. Ketamine is controlled domestically in Schedule III of the CSA. It is not controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

Khat (or qat) refers to the leaves and young shoots of the plant Cathia edulis Forsk. The principal psychoactive substances contained in khat leaves are cathinone and cathine. Cathinone (α-ketoamphetamine) is a monoamine alkaloid that is controlled domestically and internationally in Schedule I. The DEA published a final rule on January 14, 1993 (58 FR 4316), that results in the placement of any material that contains cathinone into Schedule I, which includes khat. Cathine, also a monoamine alkaloid, is controlled domestically in Schedule IV of the CSA and internationally in Schedule III drug under the Convention on Psychotropic Substances. In 1980, WHO classified khat as a drug of abuse that can produce mild to moderate psychic dependence, however khat is not controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

Tramadol is a centrally acting synthetic analgesic. At least two complementary mechanisms of action appear applicable: binding of parent and metabolite to mu-opioid receptors and inhibition of the reuptake of norepinephrine and serotonin. It is marketed in the United States for the treatment of moderate to moderately severe pain. Cases of abuse and dependence of tramadol have been reported. It is not controlled in the United States under the CSA or controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

Zopiclone is classified as a nonbenzodiazepine hypnotic. The pure enantiomer (optical isomer) of zopiclone, eszopiclone, is marketed in the United States for the treatment of insomnia. The precise mechanism of action of eszopiclone as a hypnotic is unknown, but its effect is believed to result from its interaction with gamma-aminobutyric acid (GABA)-receptor complexes at binding domains located close to or allosterically coupled to benzodiazepine receptors. Eszopiclone and zopiclone are controlled domestically in Schedule IV of the CSA and are not controlled internationally under the Psychotropic Convention or Single Convention on Narcotic Drugs.

Buprenorphine is a semisynthetic opium derivative with partial mu-opioid receptor agonist activity. In the United States, buprenorphine is available as a parenteral product marketed for the relief of moderate to severe pain, as a sublingual single-entity tablet, and as a sublingual combination tablet with naloxone. The sublingual tablets are used for the treatment of opiate addiction. Buprenorphine is controlled domestically in Schedule III of the CSA as a narcotic and is controlled internationally in Schedule III of the Psychotropic Convention.

Oripavine is a phenanthrene alkaloid contained in the species of the Papaver plant. It is a chemical derivative of thebaine, a naturally-occurring substance found in the opium plant. Oripavine is controlled domestically in Schedule II of the CSA because it is a derivative of thebaine, opium, and other opiates. Oripavine is not under international control.

III. Opportunity to Submit Domestic Information

As required by section 201(d)(2)(A) of the CSA (21 U.S.C. 811(d)(2)(A)), FDA, on behalf of HHS, invites interested persons to submit comments regarding the nine named drugs. Any comments received will be considered by HHS when it prepares a scientific and medical evaluation of these drugs. HHS will forward a scientific and medical evaluation of these drugs to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs and could impose certain recordkeeping requirements on them.

HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in early 2006. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comments as required by section 201(d)(2)(B) of the CSA.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the drugs. The abbreviated comment period is necessary to allow sufficient time to prepare and submit the domestic information package by the deadline imposed by WHO. Two copies of any comments are to be submitted, except that individuals may submit one 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.

Dated: December 5, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23958 Filed 12–12–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Tri-Functional Nanospheres

Yun-bo Shi (NICHD) *et al.*

U.S. Patent Application No. 11/135,380 filed 24 May 2005 (HHS Reference No. E–145–2005/0–US–01).

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov*.

Available for licensing and commercial development is an invention related to ''biofunctional'' tri-functional nanospheres (TFNs) or multi-functional nanospheres (MFNs) obtained by binding one or more biomaterials, such as folate, IgG, biotin or streptavidin, to fluorescent-magnetic bifunctional nanospheres (BFNs). Unlike other BFNs available, which are virtually all based on having a magnetic core, the present invention is based on mesoporous BFNs with hydrophobic inner cavities. The properties of the TFNs of the subject invention have superior qualities for use for the various applications that require aqueous solutions.

Nanospheres are becoming the materials of choice for a rapidly increasing number of pharmaceutical and biomedical applications, including the use of quantum dots (QDs) and magnetic nanoparticles. Materials with the combined function of fluorescent labeling and magnetic separation have many applications in biomedical science, including those resulting from the encapsulation of both particles in polymer microcapsules. However, these related prior technologies are predominantly dependent on core-shell type technologies. Typically, a magnetic material such as magnetite or a fluorescent particle such as a QD is used as a core. Such a core-shell structure is chemically unstable and disadvantageous for fluorescence applications because the shell tends to absorb either or both of the excitation and emission lights, thus dimming the fluorescent signal. The nanoparticles of this invention are composed of a mesoporous copolymer, a magnetic material embedded into the mesoporous copolymer, a fluorescent nanomaterial concurrently embedded into the mesoporous copolymer, and one or more biomaterials coupled to the mesoporous copolymer.

TFNs and MFNs have multiple uses. When the TFNs are labeled by a single biomaterial, the nanoparticles may specifically bind to a cell, or a protein or any other moiety that to which the biomaterial specifically binds. For instance, the biomaterial may be a small molecule ligand that is specifically bound by a cell surface receptor. MFNs in which two bioagents are coupled to single BFNs allow using one bioagent to target a macromolecule or a cell and using the second one to alter the function/properties of the macromolecule or cell, *e.g.*, using a protein to target a cell and using a toxin or cell death protein to kill the targeted cell, or using a chemical or protein to target a protein within a complex and another one to alter the function of a different component of the complex.

The technology is further described in ''Biofunctionalization of fluorescent-magnetic-biofunctional nanospheres and their applications,'' Guo-Ping Wang, Er-Qun Song, Hai-Yan Xie, Zhi-Ling Zhang, Zhi-Quan Tian, Chao Zuo, Dai-Wen Pang, Dao-Cheng Wu and Yun-Bo Shi; Chemical Communications, 2005, (34), 4276–4278; DOI: 10.1039/b508075d.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Efficient Growth of Wild-Type Hepatitis A Virus in Cell Culture for Development of Live Vaccines

Gerarado Kaplan and Krishnamurthy Konduru (FDA).

U.S. Provisional Application No. 60/684,526 filed 28 Jun 2005 (HHS Reference No. E–151–2004/0–US–01).
Licensing Contact: Chekesha S. Clingman; 301/435–5018; *clingmac@mail.nih.gov*.

This technology relates to the development of recombinant wild-type and attenuated Hepatitis A Virus (HAV) vectors capable of growing in cell culture and useful for development of a live HAV vaccine. This technology also encompasses HAV vectors coding for markers that allow the selection of cell lines that support the efficient growth of wild-type and attenuated HAV in culture for diagnostic and environmental monitoring purposes. The currently available killed HAV vaccines are expensive and require a two dose schedule to confer immunity for approximately two decades. Inability of wild-type (wt) HAV to grow efficiently in cell culture has been the major roadblock to developing a live HAV vaccine, which could confer lifelong immunity, be cost-effective and allow eradication of the virus. The inventors have developed recombinant infectious HAV coding for resistance genes against antibiotics that inhibits translation in mammalian cells and provides a selective phenotype that allows selection of cells expressing the phenotype within one week. Also, the inventors have created methods of selecting cells permissive for replication of wild-type and not overly attenuated HAV by utilizing selective or screened phenotypes and antibiotic resistant cell techniques.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Internal Control Nucleic Acid Molecule for Real-Time Polymerase Chain Reaction

Michael Vickery, Angelo DePaola, George Blackstone (FDA).
U.S. Provisional Application No. 60/471,121 filed 16 May 2003 (HHS Reference No. E–213–2003/0–US–01);
PCT Application No. PCT/US04/15175 filed 14 May 2004 (HHS Reference No. E–213–2003/0–PCT–02).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

The invention provides a PCR internal control system for use in both real-time PCR (also known as kinetic or Q–PCR) and conventional PCR. This flexible system has a number of novel design qualities which make it universally adaptable for use in virtually any real-time or conventional PCR assay, including RT–PCR and multiplex PCR applications, regardless of the organism/gene/nucleic acid being targeted. It provides the user/assay developer a choice of control product sizes, fluorogenic probe reporting systems, and thermal cycling options, allowing ease of incorporation into various assay formats and instrument platforms. This unique internal control also can be readily incorporated into virtually any existing quantitative multiplex real-time PCR assay. The invention also provides methods of using the internal control system and kits of the invention.

Additional information may be found in Vickery *et al.*, ''Detection and Quantification of Total and Potentially Virulent Vibrio parahaemolyticus Using a 4-Channel Multiplex Real-Time PCR Targeting the tl, tdh, and trh Genes and a Novel PCR Internal Control,'' published abstract, 103rd General Meeting of the American Society for Microbiology, May 18–23, 2003, Washington, DC.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Bisubstrate Inhibitors of Acetyltransferases

Dr. David Klein *et al.* (NICHD).
HHS Reference No. E–205–1999/0–PCT–02 filed 08 Aug 2000.
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov*.

The present invention provides methods of inhibiting acetyletransferase enzymes, such as arylalkylamine-N-acetyltransferase (AANAT), by producing a bisubstrate inhibitor in a cell. AANAT catalyzes the transfer of acetyl groups from Acetyl coenzyme A (AcCoA) to substrates such as serotonin. Bisubstrate inhibitors are compounds which share characteristics of AcCoA and of the specific acetyl group acceptors. A highly potent bisubstrate inhibitor of AANAT is CoA-S-N-acetyltryptamine. That inhibitor may be formed *in vitro* by the reaction of alkylating derivatives of the acetyl acceptor and AcCoA. However, the inhibitor thus formed does not cross the cell membranes and is expensive to produce using AcCoA.

The present invention is based on the surprising discovery that a bisubstrate inhibitor which is specific for a particular acetyltransferase can be formed in a cell by introducing into the cell an alkylating derivative of an acetyl acceptor. Formation of the bisubstrate inhibitor occurs efficiently at very low concentrations of introduced drug because the enzyme to be inhibited positions and catalyzes the reactants favorably to form the inhibitor. The bisubstrate inhibitor is likely to accumulate in the cell because it is stable, highly charged and thus will not pass through cell membranes. The targeted acetyltransferase will thus be inhibited and therapeutic actions realized.

The varied actions of acetyltransferases in biochemical processes offer many potential therapeutic targets. Acetylation inactivates drugs and endogenous ligands so inhibitors could, for example, enhance the effectiveness of antibiotics where antibiotic resistance is due to a high level of acetylation. In the case of AANAT, acetylation inactivates serotonin and is the rate limiting step in the formation of melatonin. Inhibition of AANAT will thus decrease melatonin production and increase serotonin levels. Melatonin is a pineal hormone that has endocrinological, neurophysiological, and behavioral functions. Since melatonin and serotonin are implicated in several types of mood disorders, inhibition of AANAT could have valuable therapeutic uses. Specific inhibitors of melatonin synthesis are not yet available and serotonin antagonists have unacceptable side effects in many patients.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Imaging With Positron-Emitting Taxanes, Camptothecins, and Other Drugs as a Guide to Antitumor Therapy

Jerry M. Collins, Raymond W. Klecker, Lawrence Anderson (FDA).
U.S. Patent Application No. 10/088,561 filed 19 Mar 2002 (HHS Reference No. E–263–1998/0–US–03);
U.S. Patent Application No. 10/319,812 filed 16 Dec 2002 (HHS Reference No. E–263–1998/1–US–01).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Available for licensing and commercial development is a method for using of positron-emitting compounds to label taxane type drugs. This invention also relates to the use, synthesis and structure of three radio-labeled probe molecules, ^{11}C–SN–38, ^{11}C-imatinib, and ^{11}C-mitoxantrone. SN–38 is a major active metabolite of Camptosar, a product marketed by Pharmacia for the treatment of colorectal cancer. Imatinib is a compound that is used to treat chronic myeloid leukemia (CML) and is

marketed under the tradename Gleevec. Mitoxantrone is also used to treat certain types of cancers and multiple sclerosis. For all of these compounds the FDA approved new and expanded uses and there is intense interest in determining whether and where each of the compounds actually collects in the body, and especially whether they are taken up by the targeted tumor. Traditional approaches to determine drug uptake and retention have been invasive. Advantages of using this technology include: (1) Avoidance of exposing patients to toxic drugs that have no potential for benefit; (2) ability to rapidly determine whether a given tumor will be likely to respond to a particular drug; and (3) the ability to monitor the impact of various dosages, schedules, and modulators for delivery, in situ, at the actual tumor under treatment conditions. Further, methods to guide treatment of solid tumors, with labeled taxanes, are also disclosed in the present application.

Additional information may be found in: Ravert *et al.*, ''Radiosynthesis of [11C]paclitaxel,'' J Label Compd and Radiopharm, 2002, 45(6):471–477.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: December 1, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–7249 Filed 12–12–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes Of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Quantitative Assay of the Angiogenic and Antiangiogenic Activity of a Test Molecule

Steven K. Libutti (NCI).
U.S. Patent Application No. 11/014,472 filed 16 Dec 2004 (HHS Reference No. E–152–2002/1–US–01).
Licensing Contact: Mojdeh Bahar; 301–435–2950; *baharm@mail.nih.gov.*

The invention provides a method of measuring the angiogenic or antiangiogenic activity of a test molecule. The method comprises obtaining an embryonated fowl egg, creating a window in the shell of the fowl egg, such that the CAM membrane is exposed, providing to a test region of interest on the CAM a substrate, administering to a vessel located in the CAM a test molecule, administering to a vessel located in the CAM a fluorescent-labeled particle, such that the fluorescent-labeled particle travels through each vessel contained in the test region of interest, removing the substrate and the test region of interest from the fowl egg, capturing a three-dimensional image of the test region of interest, wherein the three-dimensional image comprises a plurality of pixels, such that a fluorescent vascular density (FVD) value can be assigned to the test region of interest, and comparing the FVD value of the test region of interest with the FVD value of a control region of interest that was prepared in the same manner as the test region of interest but without the administration of a test molecule, such that the angiogenic or antiangiogenic activity of the test molecule is measured. A lower FVD value of the test region of interest as compared to the FVD value of the control region of interest is indicative of the test molecule being useful as an inhibitor of angiogenesis. Conversely, a higher FVD value of the test region of interest as compared to the FVD value of the control region of interest is indicative of the test molecule being useful as a stimulator of angiogenesis.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Autotaxin: Motility Simulating Protein Useful in Cancer Diagnosis and Therapy

Mary Stracke, Lance Liotta, Elliot Schiffman, Jerry Krutzch, and Jun Murata (NCI).
U.S. Patent Application filed 16 Feb 2005 (HHS Reference No. E–142–1990–2–US–05).
Licensing Contact: Mojdeh Bahar; 301–435–2950; *baharm@mail.nih.gov.*

Cell motility plays an important role in embryonic events, adult tissue remodeling, wound healing and metastasis of tumor cells. Some tumor cells produce proteins termed ''autocrine motility factors'' that stimulate motility in tumor cells. This invention describes a novel tumor protein called Autotaxin (''ATX'') that stimulates both random and directed migration of human A2058 melanoma cells. ATX is a member of the nucleotide phosphodiesterase and pyrophosphatase (NPP) family of proteins but is the only member of the family that stimulates motility. It is also the only member shown to possess lysophospholipase D activity.

This invention can provide a functional marker that can directly estimate the invasive potential of a particular human cancer. One could also use this invention as an assay for a particular secreted marker in body fluids, or in tissues. Other uses include the detection, diagnosis, and treatment of human malignancies, and other inflammatory, fibrotic, infectious and healing disorders.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: December 1, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–7250 Filed 12–12–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel, Molecular Libraries Screening Centers Network (MLSCN).

Date: December 9, 2005.

Time: 8 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 6149A, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *yyao@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Rapid Assessment Post-Impact of Disaster.

Date: December 21, 2005.

Time: 10 a.m. to 12 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: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959, *csarampo@mail.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. 93.242, 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: December 1, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23942 Filed 12–12–05; 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, Antibiotic Biosynthesis Program Project.

Date: December 12, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC .20037.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@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, ZRG1 BCMB K (90) S Prions and Tau Filaments.

Date: December 20, 2005.

Time: 1 p.m. to 3 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: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@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, Fungal Therapeutics.

Date: December 20, 2005.

Time: 3:30 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: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@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, Clinical Parasitology.

Date: December 21, 2005.

Time: 2 p.m. to 3 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: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@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, High-end S10s.

Date: January 26, 2006.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: January 31–February 1, 2006.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@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: December 5, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23943 Filed 12–12–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker permits are cancelled without prejudice.

Name	Permit #	Issuing port
A.P. Champagne Company, Inc	002	New Orleans.
International Freight Forwarders, Inc	14074	Norfolk.
Menlo Worldwide Trade Services, Inc	14075	Norfolk.
Hub Forwarding Company, Inc	04–0141	Boston.
Menlo Worldwide Trade Services, Inc	04–0016	Boston.
Brent D. Powell	04–03–AXE	Boston.
Vastera Solutions	04–0158	Boston.
Mark K. Neville, Jr.	04–0132	Boston.
Brian A. Hill	04–03–BBL	Boston.
American Shipping Co., Inc	04–0155	Boston.
Galaxy Customhouse Brokers, Inc	92103	Los Angeles.
Elizabeth Chapman	28–05–BLQ	San Francisco.
David Saliba	6416	Dallas.
Eric Peterson	26–05–JB7	Nogales.
J.L.W. Associates, Inc	00/17/001	Savannah.
Len M. Miyar	52–04–BJJ	Miami.
Jorg Berger	4864	San Francisco.

Dated: December 6, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–23990 Filed 12–12–05; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are cancelled without prejudice.

Name	License #	Issuing port
Diaz & Flores, Inc	21823	San Juan.
A.P. Champagne Company, Inc	10194	New Orleans.
Richard L. Writsman	20472	Los Angeles.
N.I. Logistics American Corporation	20580	Portland.

Dated: December 6, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–23988 Filed 12–12–05; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

Name	License #	Issuing port
Bernell W. Grizzard	16261	Atlanta

Dated: December 6, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–23991 Filed 12–12–05; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Gaspar F. Torres	21062	Otay Mesa.
Nicholas E. Vacakis	3621	San Francisco.

Dated: December 6, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–23989 Filed 12–12–05; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–64]

Notice of Submission of Proposed Information Collection to OMB; Rehabilitation Mortgage Insurance Underwriting Program Section 203(K)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection covers application, qualification, and certification processes for participants in HUD–FHA's 203(K) Rehabilitation Mortgage Insurance Program.

DATES: *Comments Due Date:* January 12, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0527) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; or Lillian Deitzer at Lillian_L_Deitzer@HUD.gov or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Rehabilitation Mortgage Insurance Underwriting Program. Section 203(K).

OMB Approval Number: 2502–0527.

Form Numbers: HUD–92700, HUD–92700–A, HUD–9746–A, HUD–92577.

Description of the Need for the Information and its Proposed Use: This information collection covers application, qualification, and certification processes for participants in HUD–FHA's 203(K) Rehabilitation Mortgage Insurance Program.

Frequency of Submission: On occasion, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,225	17.56		23.66		341,910

Total Estimated Burden Hours: 341,910.

Status: Revision of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 7, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–7244 Filed 12–12–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–18]

Announcement of Funding Awards for Fiscal Year 2005 Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2005 Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names, addresses and the amount awarded to the winners under the FHIP competition. The purpose of FHIP is also to increase compliance with the Fair Housing Act and with substantially equivalent state and local fair housing laws.

FOR FURTHER INFORMATION CONTACT: Myron P. Newry, Director, FHIP Support Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5228, Washington, DC 20410–2000, telephone (202) 708–0614, ext. 7095. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. Telephone numbers, other than ''800'' TTY numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Fair Housing Initiatives Program statute (Sec. 561 of the 1987 Housing and Community Development Act, as amended in 1992) authorizes the Secretary to make funds available through grant agreements or by contract in support of activities that assure compliance with the Fair Housing Act and substantially equivalent state and local fair housing laws. FHIP provides competitive funding under three of the four Initiatives: (1) Private Enforcement Initiative assists private tax-exempt fair housing enforcement organizations in the investigation and enforcement of alleged violations of the Fair Housing Act and substantially equivalent state and local fair housing laws, (2) Education and Outreach Initiative assists projects that inform the public about their rights and obligations under the Fair Housing Act and with substantially equivalent state and local fair housing laws, and (3) Fair Housing Organizations Initiative provides assistance to a project that will establish or build the capacity of a start up fair housing organization to become a viable fair housing enforcement organization that will conduct fair housing activities in underserved areas. The fourth initiative, Administrative Enforcement Initiative is currently not being used.

The Catalog of Federal Domestic Assistance number for this program is 14–408.

On March 21, 2005 (70 FR 13722), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $18.040 million in competitive funding allocated to the three Initiatives as follows: Private Enforcement Initiative—$13,000,000, Education and Outreach Initiative—$3,940,000, and Fair Housing Organizations Initiative—$1,100,000. This initial **Federal Register** NOFA had a closing date for FHIP of May 23, 2005. On May 25, 2005, a notice was published in the **Federal Register** allowing a grace period that extended the deadline date for FHIP until June 6, 2005.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C., 3545). One awardee, Disability Law Center of Salt Lake City, Utah, was funded ($75,252.80) under FY 2005 funding from a previous year's competition as a result of an administrative error.

LIST OF AWARDEES UNDER THE FY 2005 FAIR HOUSING INITIATIVES PROGRAM FUNDING COMPETITION, BY INITIATIVE, ORGANIZATION, AND GRANT AMOUNT

Organization name	Award amount (in dollars)
Education and Outreach Initiative	
Disability Law Center, Salt Lake City, UT	$75,252.80
United Neighborhood Center of Lackawanna County, Scranton, PA	82,603.00
Legal Aid Services of Oregon, Portland, OR	100,000.00
Legal Services of Northern California, Inc., Woodland, CA	100,000.00
Citizens Action of New Jersey, Hackensack, NJ	100,000.00
Coalition on Homelessness and Housing in Ohio, Columbus, OH	100,000.00
Champlain Valley Office of Economic Opportunity, Burlington, VT	100,000.00
Office of Human Affairs, Newport News, VA	58,215.00
Prairie State Legal Services, Inc., Rockford, IL	100,000.00
City of San Antonio, San Antonio, TX	30,135.00
United Spinal Association, Jackson Heights, NY	99,643.00
St. Martin Center, Fair Housing, Erie, PA	99,956.00
Neighborhood Economic Development Advocacy Project, New York, NY	100,000.00
Advocacy Center, New Orleans, LA	100,000.00
University of Southern Mississippi, Hattiesburg, MS	100,000.00
Aids Legal Referral Panel of San Francisco, San Francisco, CA	70,222.00
Piedmont Housing Alliance, Charlottesville, VA	72,363.00
Mental Health Advocacy Services, Inc., Los Angeles, CA	100,000.00
JC Vision and Associates, Inc., Hinesville, GA	99,990.00

LIST OF AWARDEES UNDER THE FY 2005 FAIR HOUSING INITIATIVES PROGRAM FUNDING COMPETITION, BY INITIATIVE, ORGANIZATION, AND GRANT AMOUNT—Continued

Organization name	Award amount (in dollars)
Arkansas Community Housing Corporation, Little Rock, AR	100,000.00
Housing Council in the Monroe County Area, Rochester, NY	77,110.00
Housing Authority of the City of Fresno, Fresno, CA	100,000.00
Howard University, Washington, DC	99,997.00
Fair Housing Agency of Alabama, Mobile, AL	97,905.00
La Raza Centro Legal, San Francisco, CA	100,000.00
Housing Counseling Services, Inc., Washington, DC	100,000.00
Greater Napa Fair Housing Center, Napa, CA	99,990.00
Legal Services of North Florida, Inc., Tallahassee, FL	100,000.00
Asian Pacific American Legal Center of California, Los Angeles, CA	100,000.00
American Institute for Social Justice, Washington, DC	100,000.00
ByDesign Financial Solutions, Los Angeles, CA	100,000.00
Waccamaw Regional Council of Governments, Georgetown, SC	98,915.00
City of Billings—Community Development, Billings, MT	92,879.00
AAFE Community Development Fund, New York, NY	100,000.00
Missouri Tax Justice Research Project, St. Louis, MO	100,000.00
Elizabeth City State University, Elizabeth City, NC	99,968.00
ACORN Housing, St. Paul, MN	100,000.00
New York Agency for Community Affairs, Brooklyn, NY	99,975.00
Legal Aid Society of Palm Beach County, West Palm Beach, FL	100,000.00
Virginia Office for Protection and Advocacy, Richmond, VA	100,000.00
Total Action Against Poverty in Roanoke, Roanoke, VA	87,928.62
ACORN Institute, Dallas, TX	96,952.58
Fair Housing Organizations Initiative	
Housing Discrimination Project, Holyoke, MA	500,000.00
Private Enforcement Initiative	
Fair Housing Council of Central California, Fresno, CA	220,000.00
Fair Housing Center of Greater Grand Rapids, Grand Rapids, MI	218,244.00
Housing Opportunities Made Equal, Inc., Buffalo, NY	218,930.40
Fair Housing Council Montgomery County, Glenside, PA	270,000.00
Tennessee Fair Housing Council, Nashville, TN	219,542.40
Arizona Fair Housing Center, Phoenix, AZ	219,535.20
Fair Housing Council of Suburban Philadelphia, Inc., Swarthmore, PA	275,000.00
Housing Opportunities Made Equal of G. Cincinnati, Cincinnati, OH	219,762.64
Family Housing Advisory Services, Inc., Omaha, NE	275,000.00
Fair Housing Center of South Puget Sound, Tacoma, WA	275,000.00
Jacksonville Area Legal Aid, Inc., Jacksonville, FL	274,972.67
Housing Research & Advocacy Center, Cleveland, OH	220,000.00
South Suburban Housing Center, Homewood, IL	262,500.00
Inland Fair Housing and Mediation Board, Ontario, CA	219,999.20
Fair Housing Resource Center, Inc., Painesville, OH	220,000.00
Legal Aid Society of Minneapolis, Minneapolis, MN	220,000.00
Gulfcoast Legal Services, Inc., St. Petersburg, FL	220,000.00
Connecticut Fair Housing Center, Inc., Hartford, CT	220,000.00
Chicago Lawyers' Committee for Civil Rights, Chicago, IL	219,960.80
Intermountain Fair Housing Council, Boise, ID	219,399.20
South Brooklyn Legal Services, Inc., Brooklyn, NY	220,000.00
California Rural Legal Assistance, Inc., San Francisco, CA	220,000.00
North Dakota Fair Housing Council, Bismarck, ND	188,538.40
Legal Aid Society of Hawaii, Honolulu, HI	220,000.00
Fair Housing of Marin, San Rafael, CA	220,000.00
Pine Tree Legal Assistance, Inc., Portland, ME	220,000.00
Project Sentinel, Palo Alto, CA	214,568.80
Miami Valley Fair Housing Center, Inc., Dayton, OH	220,000.00
Fair Housing Center of Northern Alabama, Birmingham, AL	220,000.00
Silver State Fair Housing Council, Reno, NV	203,629.00
John Marshall Law School, Chicago, IL	219,973.60
Fair Housing Continuum, Inc., Cocoa, FL	275,000.00
Bay Area Legal Services, Inc., Tampa, FL	127,467.89
Legal Assistant Corp. of Central Massachusetts, Worcester, MA	220,000.00
Access Living of Metropolitan Chicago, Chicago, IL	220,000.00
Metro St. Louis Equal Housing Opportunity Council, St. Louis, MO	220,000.00
Metropolitan Milwaukee Fair Housing Council, Milwaukee, WI	274,996.00
Gulf Coast Fair Housing Center, Gulfport, MS	220,000.00
HOPE Fair Housing Center, Wheaton, IL	274,702.33
Fair Housing Center of Greater Boston, Inc., Boston, MA	274,166.67

LIST OF AWARDEES UNDER THE FY 2005 FAIR HOUSING INITIATIVES PROGRAM FUNDING COMPETITION, BY INITIATIVE, ORGANIZATION, AND GRANT AMOUNT—Continued

Organization name	Award amount (in dollars)
Metro Fair Housing Services, Inc., East Point, GA	216,894.40
Montana Fair Housing, Inc., Missoula, MT	220,000.00
Central Alabama Fair Housing Center, Montgomery, AL	219,200.00
Northwest Fair Housing Alliance, Spokane, WA	220,000.00
Austin Tenants Council, Inc., Austin, TX	219,487.20
Westchester Residential Opportunities, Inc., White Plains, NY	202,048.00
Lexington Fair Housing Council, Lexington, KY	205,258.00
Fair Housing Center of Southwest Michigan, Kalamazoo, MI	199,209.60
Housing Discrimination Project, Inc., Holyoke, MA	220,000.00
Equal Rights Center, Washington, DC	220,000.00
Sentinel Fair Housing, Oakland, CA	219,432.00
West Tennessee Legal Services, Inc., Jackson, TN	275,000.00
Long Island Housing Services, Inc., Bohemia, NY	220,000.00
Fair Housing Partnership of Greater Pittsburgh, Inc., Pittsburgh, PA	220,000.00
San Antonio Fair Housing Council, San Antonio, TX	219,997.60
Fair Housing Contact Service, Akron, OH	220,000.00
Metro Fair Housing Council of Greater Oklahoma, Oklahoma City, OK	217,724.00
Bay Area Legal Aid, Oakland, CA	220,000.00
Housing Advocates, Inc., Cleveland, OH	217,640.00
Fair Housing Center of Metropolitan Detroit, Detroit, MI	112,360.80
Savannah-Chatham County Fair Housing Council, Savannah, GA	134,859.20

Dated: November 14, 2005.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. E5–7268 Filed 12–12–05; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–09]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2005–3)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2005–3). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder's Information Package (BIP) was made available to qualified bidders on November 10, 2005. Bids for the loans must be submitted on the bid date, which is currently scheduled for December 14, 2005. HUD anticipates that awards will be made on or before December 16, 2005. Closings are expected to take place on December 21, 2005.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm.* The executed documents must be mailed and faxed to S.S.D., Inc., HUD's Transaction Specialist for the sale, at 1400 K Street, NW., Suite 950, Attention: MHLS 2005–3 Sale Coordinator, Fax: (202) 464–3047.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3136, Washington, DC 20410–8000; telephone (202) 708–2625, extension 3369 or Gregory Bolton, Senior Attorney, Office of Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5245. Hearing- or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2005–3 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan. Interested Mortgagors should review the Qualification Statement to determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2005–3.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2005–3. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders.

Closings are scheduled to occur on December 21, 2005.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2005–3. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2005–3 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations, 24 CFR 290.30 *et seq.*, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2005–3:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24;

(3) any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2005–3;

(4) any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2005–3;

(5) any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2005–3;

(7) any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before November 30, 2005, audited financial statements for 1998 through 2004 for a project securing a Mortgage Loan; and

(8) any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before November 30, 2005.

In addition, any entity or individual that serviced or held any Mortgage Loan at any time during the two-year period prior to November 30, 2005, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the two-year period prior to November 30, 2005. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that two-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2005–3.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2005–3, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2005–3, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2005–3 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: December 4, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E5–7269 Filed 12–12–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1610–DP–011J]

Supplement to Notice of Availability of the Draft Resource Management Plan and Draft Environmental Impact Statement for the Price Field Office To List Proposed Areas of Critical Environmental Concern and Specific Associated Resource Use Limitations for Public Lands in Carbon and Emery Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: A notice of availability for the Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Price Field Office planning area in Carbon and Emery Counties, Utah was published in the **Federal Register,** volume 69, number 136, Friday, July 16, 2004. This supplements that Notice with information on existing and potential Areas of Critical Environmental Concern (ACECs) considered within the Draft RMP and EIS, as required in 43 CFR 1610.7–2. The CFR also provides an associated 60-day comment period.

DATES: The comment period will commence with the publication of this notice in the **Federal Register** and end 60 days after its publication.

ADDRESSES: Written comments on ACECs should be sent to the Bureau of Land Management, Price Field Office, 125 South 600 West, Price, UT 84501. If you have already submitted comments during the comment period for the Draft RMP and EIS held from July 16, 2004, to November 30, 2004, they will be considered for the Proposed RMP and Final EIS, and there is no need to resubmit them in response to this notice.

Comments, including names and street addresses of respondents, will be available for public review at the Price Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Floyd Johnson, Assistant Field Manager, BLM Price Field Office, 125 South 600 West, Price, UT 84501, phone 435–636–3600.

SUPPLEMENTARY INFORMATION: The Price Field Office planning area includes all of the public land and Federal mineral ownership managed by the Price Field Office in Carbon and Emery Counties, Utah. This area includes approximately 2.5 million acres of BLM-administered surface lands and 2.8 million acres of Federal mineral lands under Federal, State, and private surface in the area. The decisions of the Price RMP will only apply to BLM-administered public lands and Federal mineral estate.

The Draft RMP/EIS addresses five alternatives and provides proposed management decisions and impact analysis of the alternatives. The number and acreages of ACECs that would be designated vary by alternative. For example, Alternative A would designate eight ACECs comprising 167,439 public surface acres, while Alternative C would designate 19 ACECs comprising 642,516 acres. Resource use limitations applied to the ACECs also vary by alternative in some cases. There are presently 13 existing designated ACECs (289,629 total acres) in the Price Field Office, which were established by the San Rafael RMP (1991). These are reflected in the No Action Alternative of the Draft RMP and EIS. There are also 9 potential ACECs (286,416 total acres), each of which is being considered in at least one action alternative. Specific ACEC proposals, including resource use limitations, are described in detail by alternative in Chapter 2 of the Draft RMP/EIS. A summary of this information follows:

The 13 currently designated ACECs that are being reconsidered are as follows: Big Flat Tops ACEC (192 acres), Copper Globe ACEC (128 acres), San Rafael Canyon ACEC (49,791 acres), Sids Mountain ACEC (55,165 acres), Bowknot Bend ACEC (1,087 acres), Dry Lake Archaeological District ACEC (18,007 acres), Pictographs ACEC (43 acres), San Rafael Reef ACEC (74,102 acres), Muddy Creek ACEC (25,751 acres), Segers Hole ACEC (7,369 acres), Highway I–70 Scenic ACEC (39,488 acres), Swasey's Cabin ACEC (60 acres) and Temple Mountain ACEC (2,442 acres). These currently designated ACECs would continue to be designated in the No Action Alternative and in at least one of the action alternatives. Boundaries and acreages vary by alternative for the San Rafael Canyon ACEC, Sids Mountain ACEC, and Highway I–70 Scenic ACEC (acreage figures shown above are for existing ACEC boundaries). Resource use limitations for all currently designated ACECs vary by alternative and relate to leasing for oil and gas, locatable mineral entry, right-of-way (ROW) grants, private or commercial use of woodland products, livestock use, land treatments and range improvements, visual resource management (VRM), off-highway vehicle (OHV) use, disposal of mineral materials, and fire suppression activities. In addition, cultural resource considerations are made for Dry Lake Archaeological District ACEC, Pictographs ACEC, San Rafael Reef ACEC, Muddy Creek ACEC, Segers Hole ACEC, and Highway I–70 Scenic ACEC. Under all action alternatives, the Pictographs ACEC name would change to the Rock Art ACEC and 12 sites would be added, totaling 16,047 acres. Under Alternatives C and D, Swasey's Cabin ACEC and Temple Mountain ACEC would be included as a part of the Heritage Sites Potential ACEC.

The 9 potential ACECs being considered are the Lower Green River Potential ACEC (38,317 acres), Gordon Creek Potential ACEC (2,620 acres), Beckwith Plateau Potential ACEC (50,531 acres), Temple-Cottonwood-Dugout Wash Potential ACEC (72,796 acres), Nine Mile Canyon Potential ACEC (48,861 acres), Range Creek Potential ACEC (65,495 acres), Cleveland-Lloyd Dinosaur Quarry Potential ACEC (767 acres), Heritage Sites Potential ACEC (2,862 acres, 7 locations) and Uranium Mining Districts Potential ACEC (4,167 acres, 4 locations).

The Lower Green River Potential ACEC, Gordon Creek Potential ACEC, and Beckwith Plateau Potential ACEC are proposed for designation under at least one action alternative. Resource use limitations would vary by alternative and relate to livestock grazing, leasing for oil and gas; disposal of mineral materials, locatable mineral entry, OHV use, and VRM. Use limitations for ROWs within the Beckwith Plateau Potential ACEC would vary by alternative, and protective measures would have to be taken within the Gordon Creek Potential ACEC before surface-disturbing activities could occur.

The Temple-Cottonwood-Dugout Wash Potential ACEC, Nine Mile Canyon Potential ACEC, and the Range Creek Potential ACEC are proposed for designation under at least one action alternative. Resource use limitations relate to oil and gas leasing, OHV use, disposal of mineral materials, and locatable mineral entry. Within the Range Creek potential ACEC, public access would be limited to hiking and horseback riding only. The Nine Mile Canyon Potential ACEC would have restrictions relating to VRM and cultural resources as well.

The Cleveland-Lloyd Dinosaur Quarry Potential ACEC would be designated in all action alternatives. Resource use limitations would vary by alternative and relate to public access, OHV use, construction of facilities, recreation, oil and gas leasing, disposal of mineral materials, locatable mineral entry; and collection of nonrenewable resources.

The Heritage Sites Potential ACEC and the Uranium Mining Districts Potential ACEC would be designated under Alternatives C and D. Resource use limitations for the Heritage Sites Potential ACEC relate to oil and gas leasing, locatable mineral entry, disposal of mineral materials, ROW grants, land treatments and range improvements, and VRM. Resource use limitations for the Uranium Mining Districts Potential ACEC relate to firewood collection, livestock use, oil and gas leasing, disposal of mineral materials, locatable mineral entry, and cultural resources.

Dated: October 18, 2005.

Jeff Rawson,

Acting State Director.

[FR Doc. E5–7254 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1610–DP–010J]

Supplement to Notice of Availability of the Draft Resource Management Plan and Draft Environmental Impact Statement for the Vernal Field Office To List Proposed Areas of Critical Environmental Concern and Specific Associated Resource Use Limitations for Public Lands in Daggett, Duchesne, Uintah and Grand Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: A notice of availability for the Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Vernal Field Office planning area in Daggett, Duchesne, and Uintah Counties, Utah was published in the **Federal Register**, volume 70, number 10, on Friday, January 14, 2005. This supplements that Notice with information on existing and potential Areas of Critical Environmental Concern (ACECs) considered within the Draft RMP and EIS, as required in 43 CFR 1610.7–2. The CFR also provides an associated 60-day comment period on the potential ACECs.

DATES: The comment period will commence with the publication of this notice in the **Federal Register** and end 60 days after its publication.

ADDRESSES: Written comments on ACECs should be sent to the Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, UT 84078; Fax 435–781–4410. If you have already submitted comments during the comment period for the Draft RMP and EIS held from January 14, 2005, to June 24, 2005, they will be considered for the Proposed RMP and Final EIS, and there is no need to resubmit them in response to this notice.

Comments, including names and street addresses of respondents, will be available for public review at the Vernal Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality with respect to their name, address, and phone number. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jerry Kenczka, Planner, BLM Vernal Field Office, 170 South 500 East, Vernal, UT 84078, phone 435–781–4400.

SUPPLEMENTARY INFORMATION: The Vernal Field Office planning area includes all of the public land and Federal mineral ownership managed by the Vernal Field Office in Daggett, Duchesne, and Uintah Counties, in northeast Utah, and about 3,000 acres in Grand County. This area includes approximately 1.8 million acres of BLM administered surface lands and 2.1 million acres of Federal mineral lands under Federal, state, private, and Ute Tribal surface in the four county areas.

The Draft RMP/EIS addresses four alternatives and provides proposed management decisions and impact analysis of the alternatives. The number and acreages of ACECs that would be designated vary by alternative. For example, Alternative D would designate seven ACECs comprising 165,944 public surface acres, while Alternative C would designate 13 ACECs comprising 681,310 acres. Resource use limitations often vary by ACEC and alternative as well.

There are presently 7 designated ACECs (165,944 acres) in the Vernal Field Office, which were established by the Diamond Mountain Resource Management Plan (RMP) (1994). These are reflected in the No Action Alternative (Alternative D) of the Draft RMP and EIS. There are also 6 potential ACECs (515,366 acres), each of which is being considered in at least one alternative. Specific ACEC proposals, including resource use limitations, are described in detail by alternative in Chapter 2 of the Draft RMP/EIS. A summary of this information follows:

The 7 currently designated ACECs that are being reconsidered are as follows (acreage figures shown are for existing ACEC boundaries): Red Mountain-Dry Fork ACEC (24,285 acres), Nine Mile Canyon ACEC (44,181 acres), Browns Park ACEC (52,721 acres), Lower Green River ACEC (8,470 acres), Lears Canyon ACEC (1,375 acres) and Pariette Wetlands ACEC (10,437 acres), and the Red Creek Watershed ACEC (24,475 acres). Resource use limitations for these ACECs would vary by alternative, and relate to oil and gas leasing, visual resource management (VRM) and management of off-highway vehicle (OHV) use. In addition, there are limitations regarding disposal of mineral materials within the Lears Canyon and Pariette Wetlands ACECs. The Red Mountain-Dry Fork ACEC, Browns Park ACEC, Lears Canyon ACEC, Pariette Wetlands ACEC, Red Creek Watershed ACEC, and Nine Mile Canyon ACEC would continue to be designated in all alternatives, although boundaries and acreages vary by alternative for the Nine Mile Canyon and Brown's Park ACEC. The Lower Green River ACEC would continue to be designated in Alternatives A, C, and D, and boundaries and acreages for this ACEC would vary by alternative.

The 6 potential ACECs being considered are as follows: Middle Green River Potential ACEC (6,768 acres), Four Mile Wash Potential ACEC (50,280 acres), Main Canyon Potential ACEC (100,915 acres), Coyote Basin Potential ACEC, White River Potential ACEC, and Bitter Creek Potential ACEC. Boundaries and acreages would vary by alternative for the Coyote Basin, White River, and Bitter Creek Potential ACECs. When included in more than one alternative, resource use limitations for these ACECs would vary and relate to oil and gas leasing, visual resource management, and management of OHV use.

Dated: October 18, 2005.

Jeff Rawson,

Acting State Director.

[FR Doc. E5–7253 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1310–PP–OSHL]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement (EIS) and Plan Amendments for Oil Shale and Tar Sands Resources Leasing on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with section 369(d)(1) of the Energy Policy Act of 2005, the Bureau of Land Management (BLM) intends to prepare a Programmatic EIS for Oil Shale and Tar Sands Resources Leasing on Lands Administered by the BLM in Colorado, Utah, and Wyoming, and by this notice is announcing public scoping meetings. The Programmatic EIS will amend existing applicable Resource Management Plans to open lands for oil shale and tar sands resources leasing in these three states. The Programmatic EIS will also inform the development of the regulations required by section 369(d)(2) of the Energy Policy Act of 2005.

DATES: The BLM will accept written comments on the scope of the Programmatic EIS that are postmarked or delivered by January 31, 2006, and electronic comments that are received by January 31, 2006. The BLM will hold public scoping meetings to obtain comments at the following locations on the dates specified below:

Salt Lake City, Utah: Tuesday, January 10, 2006;

Price, Utah: Wednesday, January 11, 2006;

Vernal, Utah: Thursday, January 12, 2006;

Rock Springs, Wyoming: Friday, January 13, 2006;

Rifle, Colorado: Wednesday, January 18, 2006;

Denver, Colorado: Thursday, January 19, 2006;

Cheyenne, Wyoming: Friday, January 20, 2006;

The BLM will announce exact times and locations for all public meetings through the local media, newsletters, and the project Web site (*http://ostseis.anl.gov*) at least 15 days prior to the meeting. We will provide formal opportunities for public participation upon publication of the Draft Programmatic EIS.

ADDRESSES: You may submit comments by the following methods:

Written: Mail or deliver to BLM Oil Shale and Tar Sands Resources Leasing Programmatic EIS Scoping, Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL 60439.

Electronic: Through the Web site at *http://ostseis.anl.gov.*

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Sherri Thompson, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, (303) 239–3758 or visit the Oil Shale and Tar Sands Resources Leasing Programmatic EIS Web site at *http://ostseis.anl.gov.*

SUPPLEMENTARY INFORMATION: This Notice Of Intent provides public notice that the BLM intends to prepare the Programmatic EIS to amend applicable resource management plans to open BLM lands for oil shale and tar sands leasing in Colorado, Utah and Wyoming. It also announces opportunities for the public to provide comments relating to the preparation, scope, and content of the Programmatic EIS. The Programmatic EIS will also inform the development of the regulations required by section 369(d)(2) of the Energy Policy Act of 2005.

The planning area for the oil shale resources is the Piceance and Washakie Basins in Colorado, the Uintah Basin in Utah, and the Green River and Washakie Basins in Wyoming. For the tar sands resources, the planning area is certain sedimentary provinces in the Colorado Plateau in Utah. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM policies. The BLM will work collaboratively with interested parties to identify the leasing decisions that are best suited to local, regional, and national needs and concerns. The Programmatic EIS will analyze the no action alternative and leasing under stipulations to protect other resource values and other alternatives identified during scoping. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and the alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or by using one of the methods listed in the **ADDRESSES** section above. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting should participants wish to clarify their views. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor such requests to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date regarding the issues and concerns with current land management. The major issues that will be addressed in this planning effort include: Management of the oil shale and tar sands resources; surface and groundwater protection; air quality protection; wildlife and wildlife habitat quality and fragmentation; protection of wilderness, riparian, and scenic values; cultural resource protection; threatened and endangered species and habitat protection; transportation corridors; multiple mineral development; and socio-economic impacts on local economies.

After BLM has gathered public input on issues the plan should address, we will categorize comments as follows:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy, regulation, or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Programmatic EIS as to why we placed an issue in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the Programmatic EIS. The public is encouraged to help identify these questions and concerns during the scoping phase.

Planning criteria are the standards, rules, and other factors used in formulating judgments about data collection, analysis and decisionmaking associated with preparation of the Programmatic EIS. These criteria establish parameters and help focus preparation of the EIS. We welcome public comment on the following preliminary planning criteria, which will be utilized in the preparation of the Programmatic EIS:

A. The Programmatic EIS and plan amendments will be completed in

compliance with the Federal Land Policy and Management Act and all other applicable laws.

B. BLM will work collaboratively with the States of Colorado, Utah, and Wyoming, tribal governments, county and municipal governments, other Federal agencies, and all other interested groups, agencies and individuals. Public participation will be encouraged throughout the process.

C. The Programmatic EIS will amend the appropriate individual land use plans to address leasing of oil shale and tar sands resources on BLM-administered lands.

D. A strategy to mitigate socio-economic impacts including the infrastructure to accommodate the required workforce will be addressed in the Programmatic EIS and plan amendments.

E. Preparation of the Programmatic EIS and plan amendments will involve coordination with Native American Tribal governments and will provide strategies for the protection of recognized traditional uses.

F. BLM will coordinate with local, State, and Federal agencies in the Programmatic EIS and plan amendments to strive for consistency with their existing plans and Policies, to the extent practicable.

G. The Programmatic EIS will comply with the legislative directives set forth in the Energy Policy Act of 2005.

The BLM will use an interdisciplinary approach to develop the Programmatic EIS in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Minerals and geology, wildlife and fisheries, air quality, outdoor recreation, archeology, paleontology, hydrology, soils, sociology and economics.

Thomas P. Lonnie,

Assistant Director, Minerals, Realty, and Resource Protection.

[FR Doc. 05–23976 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–ET; WYW 162499]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture has filed an application requesting the Secretary of the Interior to withdraw from mining 1278.09 acres of National Forest System lands for 20 years to protect the unique natural, archaeological, and historical values in the Inyan Kara area of the Black Hills National Forest. This notice segregates the lands from location and entry under the United States mining laws for up to 2 years. The land will remain open to mineral leasing and to all other forms of disposition which may by law be made of National Forest System lands.

DATES: Comments and requests for a public meeting should be received on or before March 13, 2006.

ADDRESSES: Comments and meeting requests should be sent to the State Director, Wyoming State Office, Bureau of Land Management (BLM), P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, acting through the Forest Service, filed an application with the Bureau of Land Management to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Black Hills National Forest, Sixth Principal Meridian

T. 49 N., R. 62 W., sec. 19, lots 1 to 4, inclusive, E½, and E½W½; sec. 30, lots 1 and 2, E½NW¼, and N½NE¼.

T. 49 N., R. 63 W., sec. 24, E½E½; sec. 25, NE¼, and N½SE¼.

The area described contains 1278.09 acres, more or less, in Crook County, Wyoming.

The purpose of this proposed withdrawal is to protect an important natural, historical and cultural resource. As proposed, the withdrawal would be for a period of 20 years.

The use of a right-of-way or cooperative agreement instead of a withdrawal would not provide adequate protection for this area. Because of the broad scope and nondiscretionary nature of the general mining laws, the area would remain open and vulnerable to prospecting, location, and mining.

There are no alternative sites since the lands described contain the resources that need protection.

Water will not be needed to fulfill the purpose of the requested withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming, during regular business hours.

Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the United States mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period, the Forest Service will continue to permit uses within the statutory authorities pertinent to National Forest System lands and subject to discretionary approval.

Authority: 43 CFR 2310.3

Michael Madrid,

Chief, Branch of Fluid Mineral Operations, Lands and Appraisal.

[FR Doc. E5–7240 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6333–PH; GP2–0195]

Meetings; Resource Advisor Committees

AGENCY: Bureau of Land Management.

ACTION: Meeting notices for the Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (PL 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Roseburg District BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Roseburg District BLM Resource Advisory Committee include operating procedures, evaluation criteria for projects, and the schedule for future meetings in 2006.

DATES: The Roseburg Resource Advisory Committee will meet at the BLM Roseburg District Office, 777 NW., Garden Valley Boulevard, Roseburg, Oregon 97470, 9 a.m. to 12 p.m., on January 23, 2006.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grand Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The Roseburg District BLM Resource Advisory Committee consists of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from Jake Winn, Roseburg District Office, 777 Garden Valley Blvd, Roseburg, Oregon 97470, or *jake_winn@or.blm.gov*, of on the Web at *http://www.or.blm.gov*

Jay Carlson,

Roseburg District Manager.

[FR Doc. 05–23874 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–923–1430–ET; COC–17097, COC–17128, COC–19377]

Public Land Order No. 7648; Partial Revocation of the Executive Order Which Created Public Water Reserve No. 107; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 326.28 acres of public lands withdrawn for Bureau of Land Management Public Water Reserve No. 107. This action will open 326.28 acres to surface entry under the public land laws and to nonmetalliferous location and entry under the United States Mining laws to allow for disposal.

Effective Date: January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

SUPPLEMENTARY INFORMATION: The lands have been and will remain open to mineral leasing and to metalliferous mining.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Executive Order of April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 35 N., R. 6 E., sec. 21, lot 6.
T. 42 N., R. 6 E., sec. 11, NW1/4SE1/4.
T. 43 N., R. 7 E., sec. 29, NE1/4SW1/4.
T. 49 N., R.12 E., sec. 8, NE1/4NE1/4.
T. 46 N., R. 3 W., sec. 21, NW1/4NW1/4; sec. 29, SW1/4NE1/4; sec. 33, lot 1.

T. 46 N., R. 4 W., sec. 24, SW1/4NE1/4.

The areas described aggregate 326.28 acres in Freemont, Gunnison, Conejos, and Saguache Counties.

2. At 9 a.m. on January 12, 2006, the lands described Paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 12, 2006, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on January 12, 2006, the lands described Paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws subject to valid exiting rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law when not in conflict with Federal Law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 28, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E5–7255 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, The Department of the Interior.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS) intention to request an extension for a currently approved information collection in support of its Concession Management Program.

DATES: Public comments will be accepted on or before 60 days from the date of publication in the **Federal Register.**

ADDRESSES: Send comments to Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240; e-mail: *jo_pendry@nps.gov;* Phone: 202/513–7144; Fax: 202/371–2090.

SUPPLEMENTARY INFORMATION:

Title: Proposed Sale of Concession Operations.

OMB Control Number: 1024–0126.

Expiration Date of Approval: February 28, 2006.

Type of Request: Extension of a currently approved information collection.

Description of Need: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold, transferred or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment, or encumbrance.

16 U.S.C. 3 provides that no contract, lease, permit or privilege granted for the purpose of providing accommodations for visitors to the national parks shall be assigned or transferred by such grantees, permitees, or licenses without the approval of the NPS, first obtained in writing. It further provides that the NPS may authorize concessioners to execute mortgages and issue bonds, shares of stock, and other evidences or interest in or indebtedness upon their rights, properties and franchises, for the purpose of installing, enlarging or improving plants and equipment and extending facilities for the accommodation of the public within national parks and monuments. 16 U.S.C. 20(3) also provides that the possessory interest of a concessioner may be assigned, transferred, encumbered, or relinquished. Regulations at 36 CFR, Part 51, require that certain information be submitted for review by the NPS prior to the consummation of any sale, transfer, assignment or encumbrance.

The information requested is used to determine whether or not the proposed transaction will result in deceased services to the public, the lack of a reasonable opportunity for profit over the remaining term of the authorization, or rates in excess of existing approved rates to the public. In addition, pursuant to the regulations at 36 CFR Part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees belong to the Government. If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be adequate.

Send comments on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; (4) and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information.

Estimate of Burden: Approximately 8 hours per response.

Estimated Number of Respondents: Approximately 20.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 1600 hours.

A list of information required to be submitted with a request for sale, assignment, transfer or encumbrance of a concession authorization is set forth at 36 CFR Part 51.7.

Send comments regarding the accuracy of the burden estimated, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection to Jo A. Pendry, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW. (2410), Washington, DC 20240.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Dated: September 28, 2005.

Leonard E. Stowe,

Information Collection Clearance Officer, National Park Service, Washington Administrative Program Center.

[FR Doc. 05–23967 Filed 12–12–05; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Environmental Impact Statement for the General Management Plan, Lincoln Boyhood National Memorial, IN

AGENCY: National Park Service, Department of the Interior

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the final environmental impact statement/general management plan (EIS/GMP), Lincoln Boyhood National Memorial, Indiana.

DATES: The draft EIS/GMP was on public review for 60 days beginning on June 17. Responses to substantive public comments are addressed in the final EIS/GMP. The NPS will execute a record of decision (ROD) no sooner than 30 days following publication of the Environmental Protection Agency's notice of availability of the final EIS/GMP in the **Federal Register**.

ADDRESSES: Copies of the Final GMP/EIS are available by request by writing to the Superintendent at Lincoln Boyhood National Memorial, P.O. Box 1816, Lincoln City, Indiana 47552–1816; by telephoning the park office at (812) 937–4541; or by e-mail at <*randy_wester@nps.gov*>. The document is also available to be picked up in person at the Lincoln Boyhood National Memorial (Memorial). In addition, the document can be found at the Memorial Web site (*http://www.nps.gov/libo/pphtml/documents.html*), and at the Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov/*).

FOR FURTHER INFORMATION CONTACT: Superintendent, Lincoln Boyhood National Memorial, P.O. Box 1816, Lincoln City, Indiana 47552–1816.

SUPPLEMENTARY INFORMATION: Under the preferred alternative, the NPS would emphasize a greater array of interpretive opportunities, with the focus on the history of the Lincoln family in southern Indiana, and on the natural and sociopolitical environment of the times. The Lincoln Living Historical Farm would retain its current character; however, the interpretive program would provide visitors with interpretive opportunities and demonstrations directly related to the Lincoln story and the way in which the family likely lived in Indiana. The Memorial building and court would remain largely unchanged, but new administrative offices would be added to the rear of the structure. Where

possible, some elements of the cloister could be returned to their original design. The new addition or structure would harmonize in size, scale, proportion, and materials with the extant structure, and would not intrude on the historic scene.

Among the alternatives the NPS considered, the preferred alternative best protects the Memorial's natural and cultural resources, while also providing a range of quality recreational and educational experiences. It also meets NPS goals for managing the Memorial, and meets national environmental policy goals. The preferred alternative will not result in the impairment of resources and values. The full range of foreseeable environmental consequences was assessed.

During the public review period for the draft EIS/GMP, a total of 12 comments were received from other agencies and private individuals. None of the comments initiated a change in the results of the analysis of impacts on important resources. However, several recommendations were made concerning the management of native tree species and were incorporated into the final EIS. Other concerns were expressed considering the need for visitors to cross the existing county road and the existing railroad track. The NPS will provide proper signage for these crossings and will work with the county government to install traffic calming devices on the county road. Other concerns included the current and future route of the U.S. Highway 231.

Dated: October 28, 2005.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E5–7266 Filed 12–12–05; 8:45 am]

BILLING CODE 4312–89–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Environmental Impact for the General Management Plan, Rock Creek Park, and the Rock Creek and Potomac Parkway

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of the Final Environmental Impact Statement for the General Management Plan, Rock Creek Park and the Rock Creek and Potomac Parkway (FEIS/GMP), a unit of the National Park System within the District of Columbia.

DATES: The FEIS/GMP will be made available to the public for review and comment until February 13, 2006. During the 60 day period the National Park Service will take no action and will accept further public comment on the final plan. A 90-day public review period took place on the Draft Environmental Impact Statement for the General Management Plan, Rock Creek Park and Rock Creek and Potomac Parkway (DEIS/GMP) from April 15 to July 15, 2003 (68 FR 12368). Responses to public comment are addressed in the FEIS/GMP.

ADDRESSES: The document will be available for public review at:

- Office of the Superintendent, Rock Creek Park, 3545 Williamsburg Lane, NW., Washington, DC 20008–1207;
- Office of the Chief of Planning, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, (202) 619–7277;
- Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, (202) 208–6843;
- *http://parkplanning.nps.gov*
- *http://www.nps.gov/rocr/pphtml/documents.html*

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes four alternatives for managing Rock Creek Park and the Rock Creek and Potomac Parkway. The plan is intended to provide a foundation to help park managers guide park programs and set priorities for the management of Rock Creek Park and the Rock Creek and Potomac Parkway for the next 15 to 20 years. The FEIS/GMP evaluates the environmental consequences of the preferred alternative and the other alternatives on natural and cultural resources, traditional park character and visitor experience, public health and safety, regional and local transportation and community character.

Alternative A, ''Improved Management of Established Uses,'' is the National Park Service's Preferred Alternative. Alternative A would improve visitor safety, better control traffic speeds through the park, enhance interpretation and education opportunities and improve the use of park resources, especially cultural resources. It generally retains the current scope of visitor uses. Traffic management within the park and parkway would be improved through the use of traffic calming devices, such as speed tables, and speed enforcement measures. The existing park roadway system would be retained and nonrecreational through-traffic would be accommodated. However, to improve visitor safety and the quality of the visitor's experience, traffic speeds would be reduced as compared to the No Action Alternative.

The ''No Action'' Alternative (Alternative B) is a continuation of the present management course of visitor use and resource protection.

Alternative C, ''Non-motorized Recreation Emphasis,'' would eliminate automobile traffic along much of the northern portion of Beach Drive and implement automobile traffic along much of the northern portion of Beach Drive and implement traffic-calming measures on the roads in the southern portion of the park and on the parkway. Management of resources other than traffic would be the same as in Alternative A.

Alternative D, ''Mid-weekly Recreation Enhancement,'' would eliminate automobile traffic along much of the northern part of Beach Drive from 9:30 a.m. to 3:30 p.m. on weekdays. Management of resources other than traffic would be the same as in Alternative A. Alternative D is the environmentally preferred alternative. In the DEIS/GMP, Alternative D was the National Park Service's preferred alternative. Following issuance of the DEIS/GMP, the National Park Service considered a proposal to create a variation called D–1, which would close Beach Drive from Broad Branch Road to Joyce Road during the same time as in Alternative D, but concluded this new variation was not needed since it was essentially contained in the existing Alternative D. As a result of the comments received from the public and government agencies as well as analysis of the scientific and regulatory components and review of the conclusions of the DEIS/GMP, the National Park Service's preferred alternative is now Alternative A.

You may submit your comments on the FEIS/GMP by any of several methods. Comments may be: Mailed to the Superintendent, Rock Creek Park, 3545 Williamsburg Lane NW., Washington, DC 20008–1207; e-mailed to *rocr_superintendent@nps.gov;* or submitted via an electronic link at *http://parkplanning.nps.gov.* Click on the link ''Plans/Documents Open for Comment,'' and follow that link to ''Rock Creek Park GMP/EIS.''

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the

extent allowable by law. There also may be circumstances in which we would withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

FOR FURTHER INFORMATION CONTACT: Superintendent, Rock Creek Park, 3545 Williamsburg Lane NW., Washington, DC 20008–1207, (202) 895–6004.

Dated: September 23, 2005.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 05–23966 Filed 12–12–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Transportation Plan, Termination of the Environmental Impact Statement, Arches National Park, UT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of termination of the Environmental Impact Statement for the Transportation Plan, Arches National Park.

SUMMARY: In a Notice of Intent published May 7, 2003 (68 FR 24501), the National Park Service (NPS) announced its intent to prepare an Environmental Impact Statement (EIS) for the Transportation Plan at Arches National Park. The NPS has since determined that it is appropriate at this time to prepare an Environmental Assessment (EA), rather than an EIS, for the Transportation Plan.

SUPPLEMENTARY INFORMATION: The NPS had begun working on the EIS following publication of the Notice of Intent after preliminary analysis of the plan alternatives revealed there could be potential for significant impacts. Based on the potential costs of the plan, the NPS Washington Office of Alternative Transportation Planning Program Management requested a much smaller scale ''Transportation Implementation Plan''. This plan would include only those transportation strategies that could be implemented within a 5 to 6 year timeframe. Based on these changes and preliminary analysis of impacts of the new strategies, the NPS has determined that it is appropriate at this time to prepare an EA.

DATES: The EA will be distributed for public comment in winter 2005/spring 2006 when it is ready for public review. The NPS will notify the public by mail, website, and other means and will include where or how to obtain a copy of the EA, how to comment on the EA, and the length of the public comment period.

FOR FURTHER INFORMATION CONTACT: Laura Joss, Superintendent, Arches National Park, PO Box 907, Moab, UT 84532–0907; Tel: (435) 719–2201; FAX (435) 719–2305; e-mail: *laura_joss@nps.gov.*

Dated: November 1, 2005.

Kate Cannon,

Acting Deputy Director, Intermountain Region.

[FR Doc. E5–7267 Filed 12–12–05; 8:45 am]

BILLING CODE 4312–06–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent of Non-Renewal of Permits to Keyhole and Sundance Boat Clubs, Keyhole Reservoir, WY

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent of non-renewal of permits to Keyhole and Sundance Boat Clubs, Keyhole Reservoir, Wyoming.

SUMMARY: The permits between the State of Wyoming, Department of State Parks and Cultural Resources, Division of State Parks and Historic Sites (WSPHS) and the Keyhole and Sundance Boat Clubs at Keyhole Reservoir in northeast Wyoming will not be renewed after their expiration on December 31, 2005.

The Bureau of Reclamation is the Federal agency responsible for administering lands and resources associated with Keyhole Reservoir. Keyhole State Park (Park) is managed by Wyoming State Parks and Historic Sites through a Memorandum of Understanding with Reclamation that provides WSPHS with the authority to issue permits for limited recreation activities. Permits have been issued by WSPHS to Keyhole and Sundance boat clubs since 1967 to conduct recreation activities as boat clubs. These two boat clubs occupy a total of 18 contiguous acres on Cottonwood Bay and currently have 20 private seasonal occupancy trailers in the permit area, hereafter referred to as the ''area''.

This administrative decision results from a review to determine if the existence of the boat clubs conflicts with the best public use of the area as outlined in Part 21.4(a)(1) of 43 CFR Part 21, Occupancy of Cabin Sites on Public Conservation and Recreation Areas. Consideration was given to the following factors listed in 43 CFR 21.4 (a)(1)(i-iv): existing and projected public need for the area, compatibility between public uses and private cabin sites, development potential and plans for the area, and other relevant factors. An analysis of each of these factors is given in ''Supplemental Information''. From this analysis it has been determined that public need for the area currently occupied by Keyhole and Sundance boat clubs has grown to a point where continued use of the area by the boat clubs is no longer in the best public interest.

DATES: The Keyhole and Sundance Boat Club permits will expire December 31, 2005.

ADDRESSES: The Keyhole State Park Recreation Master Plan is available for review on WSPHS's Web site at: *http://wyoparks.state.wy.us/keyhole-recreation-master-plan.pdf* or can be obtained by writing to: Area Manager, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

FOR FURTHER INFORMATION CONTACT: Joseph E. Hall, Chief, Resource Management Division, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502; Telephone: 701–250–4242 extension 3615; or FAX to 701–250–4326.

SUPPLEMENTARY INFORMATION: Information supporting the review to determine if the existence of the boat clubs conflicts with the best public use of the area as outlined in 43 CFR 21.4 was gathered during the development of the 2003 Keyhole State Park Recreation Master Plan (Plan), an update of the Keyhole State Park Master Plan developed by WSPHS in 1981. The Plan assesses existing conditions and establishes a framework to develop and implement appropriate improvements for a 20-year period, until 2023. Development of the Plan included extensive public involvement using surveys, newsletters, public meetings, press releases, and stakeholder groups, and coordination with the Wyoming congressional delegation. Plans for development of a campground at the area including: recreational vehicle and tent sites, comfort stations, vault toilets, playground equipment, and boat launching and parking facilities were completed to meet existing and projected recreation demand as described in the Plan. Construction of the campground will begin in 2006.

In December 2003, boat club members were notified that new permits issued to

the club would terminate December 31, 2005 and could not be renewed. Permits executed with the boat clubs in April 2004 contained these conditions. A Categorical Exclusion Checklist for permit issuance was completed in accordance with the National Environmental Policy Act of 1969, as amended.

A detailed explanation of consideration of the factors outlined in 43 CFR 21.4 follows.

Existing and Projected Public Need for the Area

Keyhole Reservoir is located at the western edge of the Black Hills and is the only large reservoir in northeast Wyoming. The reservoir area includes 14,720 acres, of which 9,340 are water and 5,380 are land. The western portion of the land area is relatively flat and treeless. It is less accessible by main highways or public roads and is more dramatically affected by reservoir drawdown than the eastern portion. The smaller eastern land area has gently rolling to rocky terrain with open ponderosa pine forest. Recreation developments are concentrated in the eastern portion of the reservoir because of the tree cover, visually interesting terrain, proximity to park management facilities and infrastructure, and better access to the reservoir during lake level fluctuations.

Visitation at Keyhole State Park is linked primarily to regional growth trends. Approximately 71 percent of visitors are from Wyoming and 29 percent are from out of state. Visitation has increased steadily since the 1970s due to continued population growth in Wyoming and South Dakota. Population in Wyoming has increased 57 percent over the last 30 years while South Dakota has increased approximately 16 percent.

From 1990 to 2000 visitation at the Park increased by 98 percent, with approximately 200,000 visitors recorded in the year 2000, an approximate 5 percent increase over 1999. Visitation projections were made in the Plan using a range of possible growth scenarios; low (1.5 percent), medium (3.0 percent), and high (5.0 percent). Using the lowest visitation growth rate of 1.5 percent, park visitation is projected at 219,918 by 2008 and 283,000 by 2023.

Growth in population and the number of visitors creates additional demand for recreation facilities. Visitor surveys conducted at the Park in 1993, 1997, and 2000 list camping as one of the most popular activities at the Park and show that this popularity has increased since 1993. Using data from the 1997 and 2000 surveys, on average, 60 percent of peak season visitors camp at least one night. This percentage, plus peak season visitor use, was used to project numbers of future campers and the corresponding future campsite need. An estimated 800–900 campers per day will visit the Park by 2008, with a campsite need of 275 to 310. By 2023, 350 to 485 campsites will be needed to provide for an estimated 1,000 to 1,400 campers per day. Also, recreation trends in campgrounds are changing. The Plan identifies a current lack of and future need for campsites that accommodate large recreational vehicles. A visitor survey conducted in 2004, after completion of the Plan, identified developed campgrounds as the most important facilities in State Parks, reflecting the trend toward more developed camping with larger campers and recreational vehicles.

In 2003, Keyhole State Park had 8 developed campgrounds with a total of 180 campsites. Campground occupancy on summer weekends is high in all developed campgrounds. Pronghorn and Arch Rock campgrounds, located on either side of the area, are the parks most popular campgrounds with occupancy rates ranging from 79 percent to 114 percent and with the peak occupancy recorded as 123 percent and 140 percent, respectively. Occupancy over 100 percent means that more than one camping unit is using each camping space and/or campers are being allowed to camp in undesignated areas not suitable for camping. This is causing resource impacts such as erosion and soil compaction in campgrounds and undeveloped areas.

To alleviate damage to resources and meet demand for campsites, the Plan recommends the addition of 258 new campsites, for a total of 438 sites. All existing campgrounds, as well as undeveloped areas, were evaluated during the planning process to determine which areas have good potential for additional campsites or developed campgrounds. This resulted in recommendations to add campsites or alter campsites to allow for larger recreational vehicles in many existing campgrounds. Much of the western portion of the reservoir was not considered suitable for expansion because of the constraints discussed above. Many locations on the eastern portion of the reservoir have other development constraints such as terrain (for example, cliffs that prevent access to the water), lack of roads to provide public access, and natural resource concerns.

While it is feasible to add a limited number of campsites to many campgrounds, the constraints in existing campgrounds discussed above prevent the large scale expansion that is needed to meet current and 2023 projected campsite demands. A new campground proposed on Mule Creek Bay will supply part of the needed campsites, but this area is less accessible to the public than the Pronghorn/Arch Rock areas and will require significant investment to develop roads, water supply, and other infrastructure. Mule Creek Bay is a lower priority for development as it will primarily meet long term needs rather than current and near future demands. The area occupied by the boat clubs offers the best location for the immediate addition of a new campground for the reasons discussed below.

The 18-acre area occupied by the boat clubs is located on the west side of Cottonwood Bay, between Pronghorn and Arch Rock Campgrounds. Cottonwood Bay is narrow and sheltered, with shade, protection from the wind, and relatively stable water levels. The west side of the bay is easily accessed from Interstate 90 via the recently improved Pine Ridge Road and one of the main park roads, which already has an entrance/fee booth. The west side includes the marina which has a store, boat launch, and shower facility; a universally accessible paved trail; a modern water system; and park headquarters which facilitates management and oversight by WSPHS. The boat club area's location here between two most popular existing campgrounds makes it a logical choice for additional camping.

Compatibility Between Public Uses and Private Cabin Sites

According to the visitor surveys conducted in 1993, 1997, 2000, and 2004, the most popular recreation activities at the park include recreational vehicle/trailer camping, tent camping, boating, fishing, swimming, picnicking, hiking, sightseeing, and relaxing. A Labor Day survey in 2000 found fishing to be the most popular activity, followed closely by boating and camping.

In contrast to the increasing public use of the park, surveys of visitation at the boat clubs during weekends and holidays from 1998 through 2003 indicate that average weekend visitor use of the boat clubs has varied between 13 percent and 21 percent of the boat club trailers.

Public entry to boat club areas is not prohibited but these areas are not open for public camping, and public access in the past for other recreation activities has been both formally and informally discouraged by boat club members. The

arrangement of the trailers, which are located on lots throughout the 18 acres, prevents the development of attractive public spaces and facilities and inhibits the general public from engaging in most recreation activities in the area. This is in contrast to the wide variety of recreational uses that occur on the rest of Cottonwood Bay. Increased public recreation activity in the area is being prevented by the occupation of the 18 acres by the boat clubs.

Development Potential and Plans for the Area

The boat club area was reviewed during the preparation of the Plan and found to be suitable for development and recreational use, with low potential for conflicts between development and natural resources. The area is lightly forested with favorable slopes and water access, provides minimal wildlife habitat, has sparse ground cover, existing disturbance from human use, no known or suspected federally listed threatened or endangered species, no wetlands that would be impacted, and no cultural or historical resources within the area boundary.

The proposed new campground at the area would include approximately 40 recreational vehicle sites, including group sites which are large enough to accommodate modern recreational vehicles, approximately 8 tent sites, camper cabins, electrical hook-ups, central water sources, a comfort station, play area, camper boat launch, and expanded parking. The design would utilize many of the existing roads and trailer pads. The new campground could be managed by a concessionaire, creating opportunity for additional amenities for the public including: Boat slip rentals, marina facilities, recreational vehicle sites with electrical and water hookups, and shower facilities. This campground design has been extensively reviewed and revised to assure that it will meet current and future recreation needs.

This campground would provide 48, or almost 20 percent, of the 258 new campsites recommended for the park. It will be located in a highly desirable area with favorable development potential.

Other Relevant Factors

An Environmental Assessment (EA) for changing the use of the area from exclusive to non-exclusive was completed, with a Finding of No Significant Impact signed on November 17, 2005. This EA analyzed the impact of the proposed action on a variety of resources, and utilized the information gathered during the public involvement process for the Plan. The EA/FONSI indicates that there will be no significant detrimental impacts to natural resources from changing the use of the area. This change will benefit the general public by allowing them access to the area and meeting public demand for campsites.

All of the provisions of 43 CFR 21.4 (b) have been met. There are no substantial improvements on the 18-acre boat club area which would require amortization as required by 43 CFR 21.4 (b). No substantial improvements were placed in the area prior to the June 10, 1967, the effective date of 43 CFR part 21. Had substantial improvements been in place the 20 year amortization period described in 43 CFR 21.4(b) would have expired in 1987. The trailers and any removable facilities such as decks, fire rings, or the portable toilets used by the boat clubs are not considered substantial improvements as per 43 CFR 21.3 (e). The Keyhole Boat Club constructed a boat ramp in 1980. They agreed in writing that the ramp would become the property of WSPHS after construction.

This administrative decision is consistent with applicable Reclamation policy, directives and standards. Reclamation's Recreation Management Policy (LND P04) directs Reclamation to ''Prohibit new exclusive uses, as allowed by current use agreements, to maximize public recreation activities, facilities and services''. Reclamation's Land Use Authorizations Directives and Standards (LND 08–01) directs Reclamation to eliminate exclusive private uses of Reclamation land when a use authorization expires if it is determined that there is a public need for the area. The factors to consider when determining when sites are needed for public use included in those directives and standards were evaluated in this review.

Dated: December 7, 2005.

Gregory Gere,

Deputy Area Manager, Dakotas Area Office.

[FR Doc. E5–7256 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of TUV Product Services GmbH (TUVPSG) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The expansion of recognition becomes effective on December 13, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of TUV Product Services GmbH (TUVPSG) as a Nationally Recognized Testing Laboratory (NRTL). TUVPSG's expansion covers the use of additional test standards. OSHA's current scope of recognition for TUVPSG may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvpsg.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (*i.e.*, the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

TUVPSG submitted an application, dated September 18, 2003 (see Exhibit 10) to expand its recognition to include 5 additional test standards. The NRTL Program staff determined that each of these standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). Therefore, OSHA is approving these five test standards for the expansion. Following review of the application, OSHA requested certain additional information from TUVPSG and deferred action on the application pending receipt of this information. The NRTL adequately responded to that request prior to publication of the preliminary notice, permitting OSHA to resume processing of the application. In connection with this request, OSHA evaluated the NRTL's capability for the additional test standards during an on-site review of TUVPSG's NRTL facility, and the assessor recommended the expansion for the additional standards (see Exhibit 11). The preliminary notice announcing the expansion application was published in the **Federal Register** on May 18, 2005 (70 FR 28583). Comments were requested by June 2, but no comments were received in response to this notice.

The previous notices published by OSHA for TUVPSG's recognition covered an expansion of recognition, which became effective on April 22, 2003 (68 FR 19856).

You may obtain or review copies of all public documents pertaining to the TUVPSG application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC, 20210. Docket No. NRTL1–2001 contains all materials in the record concerning TUVPSG's recognition.

The current address of the TUVPSG facility already recognized by OSHA is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that TUVPSG has met the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVPSG, subject to the following limitation and conditions.

Limitation

OSHA limits the expansion of TUVPSG's recognition to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that the standards meet the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 201 Garage Equipment
UL 325 Door, Drapery, Gate, Louver and Window Operator and Systems
UL 696 Electric Toys
UL 697 Toy Transformers
UL 1029 High-Intensity-Discharge Lamp Ballasts

The designation and title of the above test standards were current at the time of the preparation of the notice of the preliminary finding.

OSHA's recognition of TUVPSG, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUVPSG must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to TUVPSG's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVPSG has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVPSG must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVPSG agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVPSG will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVPSG will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 28th day of November, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

[FR Doc. E5–7261 Filed 12–12–05; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, December 15, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Credit Union Share Insurance Fund (NCUSIF) Operating Level for 2006.
2. Proposed Rule: Section 701.2(h) of NCUA's Rules and Regulations, Third-Party Servicing of Indirect Vehicle Loans.
3. Final Rule: Part 723 of NCUA's Rules and Regulations, Member Business Loans.
4. Final Rule: Section 741.8 of NCUA's Rules and Regulations, Purchase of Assets and Assumptions of Liabilities.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 15, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Insurance Appeal. Closed pursuant to Exemptions (6) and (9)(B).
2. One (1) Personnel Matter. Closed pursuant to Exemptions (2) and (6).

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–24005 Filed 12–8–05; 4:12 pm]

BILLING CODE 7535–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Meeting; Regular Board of Directors Meeting

Time & Date: 2 p.m., Monday, December 19, 2005.

Place: Neighborhood Reinvestment Corporation, DBA NeighborWorks® America, 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

Status: Open.

Contact Person for More Information: Jeffrey T. Bryson, General Counsel/Secretary 202–220–2372; *jbryson@nw.org*.

Agenda:

I. Call to Order
II. Approval of Minutes: October 3, 2005
III. Audit Committee Meeting
IV. Finance and Budget Committee
V. Corporate Fundraising Committee
VI. CEO Quarterly Management Report
VII. NHSA Update
VIII. Adjournment

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 05–24030 Filed 12–9–05; 2:13 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; License No. NPF–38]

Entergy Louisiana, Inc., Entergy Operations, Inc., (Waterford Steam Electric Station, Unit 3); Order Approving Transfer of License and Conforming Amendment

I.

Entergy Louisiana, Inc. (ELI) is the owner of Waterford Steam Electric Station, Unit 3 (Waterford 3), located in St. Charles Parish, Louisiana. Entergy Operations, Inc. (EOI), is the licensed operator of Waterford 3. They are the holders of Facility Operating License No. NPF–38, which authorizes operation of Waterford 3, issued by the Nuclear Regulatory Commission (NRC or the Commission). The license authorizes ELI to possess, and EOI to use and operate, Waterford 3.

II.

By application dated July 20, 2005, as supplemented September 14, 2005, EOI, acting on behalf of itself and ELI, requested approval by the NRC of the transfer of Facility Operating License No. NPF–38 for Waterford 3 from ELI to Entergy Louisiana, LLC (ELL). The initial application and the supplement are hereinafter referred to as ''the application'' unless otherwise indicated. EOI also requested approval of a conforming license amendment to reflect the transfer. The conforming license amendment would replace references to ELI with ELL. The application requested approval of the transfer of Facility Operating License and Materials License No. NPF–38 for Waterford 3, held by ELI and EOI, and approval of a conforming amendment, pursuant to Title 10 of the *Code of Federal Regulations*, Sections 50.80 and 50.90. The transfer is associated with the restructuring of ELI from a Louisiana corporation to a Texas limited liability company, ELL. EOI will continue to operate Waterford 3, and the proposed restructuring will not affect the technical or financial qualifications of ELL or EOI.

Notice of consideration of approval and an opportunity for a hearing was published in the **Federal Register** on October 17, 2005 (70 FR 60374). No hearing requests or written comments were received. The supplemental letter dated September 14, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not affect the applicability of the generic no significant hazards consideration determination.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information in EOI's application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that ELL is qualified to hold the license for Waterford 3 and that the transfer of the license to ELL, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; and the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public. The NRC staff finds the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated December 2, 2005.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, it is hereby ordered that the transfer of the license as described herein to Entergy Louisiana, LLC, is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the license transfer to Entergy Louisiana, LLC, Entergy Louisiana, Inc. shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, within 5 business days, and of the date of the closing of the transfer no later than 7 business days before the date of closing. If the transfer is not completed by January 1, 2006, this Order shall become null and void, with the provision that, upon written application and for good cause shown, such date may be extended.

(2) At the time of the closing of the transfer of ownership of Waterford 3 and license from Entergy Louisiana, Inc. to Entergy Louisiana, LLC, the Waterford 3 decommissioning trust agreement(s) shall be amended to reflect Entergy Louisiana, LLC as the owner of all the decommissioning trust funds accumulated as of the date of the closing.

(3) Prior to completion of the transfer of the Waterford 3 operating license,

Entergy Louisiana, LLC shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140, ''Financial Protection Requirements and Indemnity Agreements,'' of the Commission's regulations.

It is further ordered that consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 20, 2005, the supplemental letter dated September 14, 2005, and the safety evaluation dated December 2, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet on the NRC's Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the document located in ADAMS, should contact the NRR PDR Reference Staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of December, 2005.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7271 Filed 12–12–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412; License Nos. DPR–66 AND NPF–73]

FirstEnergy Nuclear Operating Company (FENOC), et al.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a petition dated April 12, 2005, filed by Mr. David Lochbaum, of the Union of Concerned Scientists, hereinafter referred to as the ''Petitioner.'' The petition concerns the operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2).

The Petitioner requested that the Nuclear Regulatory Commission (NRC or Commission) either (1) take enforcement action against FirstEnergy Nuclear Operating Company (FENOC or the licensee) and impose a civil penalty of at least $55,000, or (2) move the license renewal application for the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), to the end of the current review queue.

As a basis for the requests, the Petitioner cited NRC news release 05–052, dated March 24, 2005, which stated that the NRC returned the February 9, 2005, license renewal application submitted by FirstEnergy Nuclear Operating Company. The Petitioner quoted a statement made by Mr. David Matthews, Director of the Division of Regulatory Improvement Programs at NRC:

> The NRC's primary mission is ensuring protection of public health and safety, and we cannot do that for an additional 20 years of Beaver Valley operation unless we have complete, accurate, and up-to-date information on the plant. Given the gaps in the current application, we simply could not properly review FirstEnergy's request.

The Petitioner further stated that the licensee's February 9, 2005, submittal was not complete and accurate in all material respects and that this is a violation of 10 CFR 50.9(a) which requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects. The Petitioner stated his basis for the alternative sanction of moving the license renewal application: Moving the application to the end of the current queue would allow time for the licensee to ensure the resubmittal is complete and accurate. It would also allow the NRC to review the application without requiring additional resources to recheck the resubmittal concurrent with other license renewal reviews, which the Petitioner stated could compromise the quality of the NRC review.

The NRC staff performed an acceptance review of the license renewal application to determine if sufficient information existed for the NRC staff to begin its detailed technical review. The NRC staff determined that the application did not contain sufficient detail and therefore was not acceptable for docketing. This determination was conveyed to the applicant by letter dated March 24, 2005. The licensee responded to this letter by letter dated April 19, 2005.

In an acknowledgment letter dated May 20, 2005, the NRC informed the Petitioner that the portion of the petition requesting that enforcement action be taken was accepted for review under 10 CFR 2.206 and had been referred to the Office of Nuclear Reactor Regulation for appropriate action.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioner and to the licensee for comment by letters dated September 15, 2005. The NRC staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to take enforcement action against the licensee and impose a civil penalty of at least $55,000 is denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–05–06), the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*.

The Director's Decision addresses (1) whether a violation of NRC regulations occurred with respect to the licensee's license renewal application and (2) whether enforcement action should be taken.

With respect to the first issue, the NRC staff concluded that the licensee's license renewal application did contain an example of incorrect information and that the submission of incorrect information in the licensee's application is a violation of 10 CFR 54.13. With respect to the second issue, the NRC staff concluded that the violation is appropriately classified as minor and pursuant to Section 3.9 of the NRC Enforcement Manual, the NRC did not document its identification of this minor violation in an inspection report or correspondence to the applicant. Further, pursuant to Section 3.9 of the NRC Enforcement Manual and the NRC Enforcement Policy, Sections IV.B, VI.A–B, and Supplement VII.E, the NRC did not cite this minor violation and did not propose a civil penalty.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As

provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 3rd day of December, 2005.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7270 Filed 12–12–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Extend the Completion Times for Inoperable Containment Isolation Valves at General Electric Plants Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application relating to changes to the Standard Technical Specifications (STSs) 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' for boiling-water reactors (BWR) in NUREG–1433, Revision 3, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' and ''NUREG–1434, Revision 3, ''Standard Technical Specifications, General Electric Plants, BWR/6.'' The proposed change to the STSs 3.6.1.3 would extend to 7 days the completion time (CT) (or allowed outage time (AOT)) to restore an inoperable PCIV to operable status or isolate the affected penetration flow path both for selected primary containment penetrations with two (or more) PCIVs and for selected primary containment penetrations with only one PCIV. This change is based on analyses provided in a generic topical report (TR) submitted by the BWR Owners' Group (BWROG). The BWROG, through its participation in the Technical Specification (TS) Task Force (TSTF) proposed this change to the STSs in Change Traveler No. TSTF–454, Revision 1. This notice also includes a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to this matter.

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate this change into plant-specific TSs for General Electric (GE) BWRs. Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should provide supporting documentation to confirm the applicability of the SE and NSHC determination to its plant.

DATES: The NRC staff issued a **Federal Register** Notice (70 FR 30151, May 25, 2005) which provided a model SE and a model NSHC determination relating to the extension of the CT for TS actions related to inoperable PCIVs at GE plants. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to extend the PCIV completion times as described in Revision 1 to TSTF–454. The staff has posted a model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to request the subject TS change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Bhalchandra Vaidya, Mail Stop: O–7D1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3308.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STSs in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STSs, following a preliminary assessment by the NRC staff, and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STSs and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves an increase in the allowed CTs to restore an inoperable PCIV to operable status or isolate the affected penetration flow path when selected PCIVs are inoperable at BWRs. By letter dated September 5, 2003, the BWROG proposed this change, including corresponding changes to the TS Bases, for incorporation into the STSs as TSTF–454, Revision 0. By letter dated September 21, 2005, BWROG revised the proposed change as TSTF–454, Revision 1. This change is based on the NRC staff-approved generic analyses contained in BWROG TR NEDC–33046–A, ''Technical Justification to Support Risk-Informed Primary Containment Isolation Valve AOT Extensions for BWR Plants,'' transmitted to the NRC on January 20, 2005, which is accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession No. ML050240360) at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. This transmittal incorporated TR NEDC–33046, submitted on May 3, 2002 (ADAMS Accession No. ML021280156), as supplemented by letter dated July 30, 2003 (ADAMS Accession No. ML032130164), and as approved by the NRC in its letter and SE dated October 8, 2004 (ADAMS Accession No. ML042660055). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Applicability

This proposed change to revise the TS CTs for selected PCIVs is applicable to GE BWRs.

To efficiently process the incoming license amendment applications, the NRC staff requests each licensee applying for the changes addressed by TSTF–454, Revision 1, to use the CLIIP to address the seven plant-specific conditions and the one commitment identified in the model SE, as follows:

Conditions

1. Because not all penetrations have the same impact on core damage frequency (CDF), large early release frequency (LERF), incremental conditional core damage probability (ICCDP), or incremental conditional large early release probability (ICLERP), a licensee's application must provide supporting information that verifies the applicability of TR NEDC–33046, including verification that the PCIV configurations for the specific plant match the TR and that the risk parameter values used in the TR are bounding for the specific plant. Any additional PCIV configurations or non-bounding risk parameter values not evaluated by the TR should be included in the licensee's plant-specific analysis. [Note that PCIV configurations or non-bounding risk parameter values outside the scope of the TR will require NRC staff review of the specific penetrations and related justifications for the proposed CTs.]

2. The licensee's application must provide supporting information that verifies that external event risk, either through quantitative or qualitative evaluation, will not have an adverse impact on the conclusions of the plant-specific analysis for extending the PCIV CTs.

3. Because TR NEDC–33046 was based on generic plant characteristics, each licensee adopting the TR must provide supporting information that confirms plant-specific Tier 3 information in their individual submittals. The licensee's application must provide supporting information that discusses conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), as they relate to the proposed PCIV CTs and the guidance contained in NUMARC 93–01, Section 11, as endorsed by Regulatory Guide (RG) 1.182, ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.'' This should include verification that the licensee's maintenance rule program, with respect to PCIVs, includes a LERF and ICLERP assessment as part of the maintenance rule process.

4. The licensee's application must provide supporting information that verifies that a penetration remains intact during maintenance activities, including corrective maintenance activities. Regarding maintenance activities where the pressure boundary would be broken, the licensee must provide supporting information that confirms that the assumptions and results of the TR remain valid. This includes the assumption that maintenance on a PCIV will not break the pressure boundary for more than the currently allowed CT.

5. The licensee's application must provide supporting information that it will verify the operability of the remaining PCIVs in the associated penetration flow path before applying an extended CT for an inoperable PCIV.

6. Simultaneously utilizing the proposed extended CT for multiple inoperable PCIVs and the resulting impact on risk were not specifically evaluated by the BWROG. However, TR NEDC–33046 does state that multiple PCIVs can be out of service simultaneously during extended CTs and does not preclude the practice. Therefore, the licensee's application must provide supporting information that confirms that its Tier 3 configuration risk management program (10 CFR 50.65(a)(4)) requires that simultaneous application of an extended CT to more than one inoperable PCIV in separate penetration flow paths is evaluated. The purpose of this evaluation is to ensure that the cumulative risk of continued plant operation with multiple inoperable PCIVs utilizing extended CTs does not exceed the plant risk value, as determined by the analysis presented in TR NEDC–33046.

7. The licensee must provide supporting information that verifies that the plant-specific probabilistic risk assessment (PRA) quality is acceptable for this application in accordance with the guidelines given in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-specific Changes to the Licensing Basis.'' To ensure the applicability of TR NEDC–33046 to a licensee's plant, each licensee requesting an amendment must provide additional information on PRA quality in the following areas:

a. Justification that the plant-specific PRA reflects the as-built, as-operated plant.

b. Applicable PRA updates including individual plant examinations (IPE) and individual plant examinations of external events (IPEEE) findings.

c. Conclusions of the peer review including any A or B facts and observations (F and Os) applicable to the proposed PCIV extended CTs.

d. The PRA quality assurance program and associated procedures.

e. PRA adequacy, completeness, and applicability with respect to evaluating the plant specific impact of the proposed PCIV extended CT.

Commitment

The RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' Tier 3 program ensures that, while the plant is in a limiting condition for operation (LCO) actions condition with an extended CT for restoring an inoperable PCIV to operable status, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition the inoperable PCIV or associated system is designed to mitigate and, as a result, increase plant risk beyond that determined by the TR analysis. A licensee's implementation of RG 1.177 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed PCIV extended CT impacts containment isolation and, consequently, LERF as well as CDF. Therefore, each licensee requesting extended CTs for PCIVs under TSTF–454, Revision 1, must commit to enhancing its configuration risk management program (CRMP), including those implemented under 10 CFR 50.65(a)(4), the maintenance rule, to include a LERF methodology and assessment. This commitment and the CRMP enhancements must be documented in the licensee's plant-specific application.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without providing the information described in the above seven conditions, or making the requested commitment. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

In a notice published in the **Federal Register** dated May 25, 2005 (70 FR 30151), the NRC staff requested comment on the use of the CLIIP to process requests to extend the CT for selected inoperable PCIVs at GE plants, as described in Revision 0 of TSTF–454.

TSTF–454, Revision 1, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O–1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

In response to the notice soliciting comments from interested members of the public about modifying the TS requirements regarding an increase in the specified CTs to restore an inoperable PCIV to operable status or

isolate the affected penetration flow path when selected PCIVs are inoperable at BWRs, the NRC staff received three comments from the Owners Group TSTF members. These comments were specific to the model SE and are discussed as follows:

Comment 1 (as stated)

Condition 3, Condition 6, and the one required commitment of Section 3.2, Evaluation of Proposed Changes, of the model Safety Evaluation are not clear or consistent on the expectations for a containment performance assessment (*i.e.*, large early release fraction [should be ''frequency''], or LERF) as part of the configuration risk management program (CRMP). These conditions should be clarified either in the Safety Evaluation or in the CLIIP model application.

Condition 3 requires licensees to conform to the Maintenance Rule requirements of 10 CFR 50.65(a)(4), as it relates to Primary Containment Isolation Valve (PCIV) Completion Times and the guidance of NUMARC 93–01, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Section 11, including a LERF and incremental conditional large early release probability (ICLERP) assessment as part of the process. In addition, Condition 6 requires the CRMP to confirm that simultaneous extended Completion Time entries in separate penetration flow paths will not exceed the Regulatory Guide 1.174 and Regulatory Guide 1.177 acceptance guidelines. The commitment required by the Safety Evaluation also requires the licensee's CRMP be enhanced to include a LERF methodology and assessment.

Many licensees do not currently have a probabilistic risk assessment (PRA) Level 2 model built into the CRMP for calculating a LERF risk value. Adding the LERF model will significantly delay adoption of the proposed Traveler [TSTF–454]. The containment risk management assessment is routinely addressed through qualitative methods and administrative controls. Section 11 of NUMARC 93–01 allows for qualitative assessment methods. Section 11.3.4, Assessment Methods for Power Operating Conditions, states, ''Simultaneous removal from service of multiple SSCs [structures, systems, and components] requires that an assessment be performed using quantitative, qualitative, or blended (quantitative and qualitative) methods.'' Sections 11.3.4.1 and 11.3.4.2 provide guidance regarding quantitative and qualitative considerations, respectively.

Is it the intent of the conditions and commitment to require a PRA calculation to quantify LERF risk values for the specific plant configurations each time a PCIV is inoperable? Would this apply only when the extended Completion Time is used or only when multiple penetration flow paths are affected as discussed in Condition 6? Would it be acceptable to assess and manage the containment performance impacts by qualitative methods and administrative controls as currently allowed by NUMARC 93–01 as endorsed by Regulatory Guide 1.182? For example, an assessment program could manage containment performance risk by limiting the number of affected penetration flow paths depending on factors such as the flow path size and not require a LERF calculation for each occurrence.

Response to Comment 1

The BWROG states that many licensee's do not have a level 2 PRA model built into the CRMP for calculating LERF. The BWROG further states that adopting a LERF model will significantly delay implementation of the proposed TSTF traveler. The BWROG references Sections 11.3.4.1 and 11.3.4.2 of NUMARC 93–01 for both quantitative and qualitative risk assessment methods in the evaluation of Tier 3. Although they are inter-related, the following questions were identified in BWROG Comment 1 concerning Conditions 3 and 6 of the staff model SE issued for comment on May 25, 2005 (70 FR 30151).

1. Is it the intent of the conditions and commitment to require a PRA calculation to quantify the LERF risk values for the specific plant configurations each time a PCIV is inoperable?

2. Would this apply only when the extended CT is used or only when multiple penetration flow paths are effected as discussed in Condition 6?

3. Would it be acceptable to assess and manage the containment performance impacts by qualitative methods and administrative controls as currently allowed by NUMARC 93–01, endorsed by RG 1.182?

Condition 3 of the model SE is intended to ensure that a licensee's CRMP includes a LERF and an ICLERP assessment for PCIVs as part of the CRMP and maintenance rule process. The intent of the conditions and commitment is to ensure an assessment of risk for the actual resulting plant configuration when a PCIV is inoperable. The concerns of the NRC staff are that PCIVs affect risk mainly through LERF, and that CRMP evaluations performed as part of Tier 3 may not address LERF in the risk evaluation. An additional concern of the NRC staff stems from the fact that TR NEDC–33046 only evaluated the risk of extending the CT for a single PCIV. However, the implementation of the TR allows separate concurrent extended CTs for multiple inoperable PCIVs because the current and proposed STSs for extended PCIVs allow separate actions condition entry for each penetration flow path (see the NRC staff's response to Comment 2). As stated by the BWROG in its comment, many licensees do not have a PRA level 2 model incorporated into the CRMP for the evaluation of LERF. The intent of Condition 3 is to ensure that Tier 3 evaluations of both CDF and LERF are performed to assess PCIV CTs when PCIVs are determined to be inoperable or taken out of service. As stated in Condition 3 of the NRC staff model SE, a licensee's application must provide supporting information that discusses the plant's conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)) and the guidance contained in NUMARC 93–01, Section 11, as endorsed by RG 1.182. With respect to comment 1 in general, the NRC staff cannot provide a definitive response without reviewing a plant-specific approach. The assessment program chosen by a licensee or the BWROG (qualitative, quantitative, or combination) must be documented in the licensee's application because Tier 3 aspects of the proposed PCIV CT extensions were not specifically addressed by TR NEDC–33046. Therefore, the NRC staff does not believe that changes to Condition 3 are warranted.

Comment 2 (as Stated)

Condition 6 of Section 3.2, Evaluation of Proposed Changes, requires the licensee's application to provide supporting information that verifies that the potential for any cumulative risk impact of failed PCIVs and multiple PCIV extended Completion Time entries has been evaluated and is acceptable. The verb tense ''has been evaluated'' is confusing. Is [it] the intent to require an assessment of the plant's design and historical experience to verify that the potential for multiple extended Completion Time entries is low? Please clarify either in the Safety Evaluation or in the CLIIP model application what the evaluation involves.

Response to Comment 2

The following question was identified in BWROG Comment 2 concerning Condition 6 of the staff model SE issued for comment on May 25, 2005 (70 FR 30151).

The verb tense ''has been evaluated'' is confusing. Is [it] the intent of condition 6 to require an assessment of the plant's design and historical experience to verify that the potential for multiple concurrent use of extended Completion Times is low? Please clarify in either the Safety Evaluation or the CLIIP model application what the assessment should address.

Condition 6 is concerned with the Tier 3 analysis that provides added assurance that the TR's conclusion that no risk significant configurations will result from the proposed extended PCIV CTs remains valid over extended periods of plant operation. However, in addition to Condition 6, as stated in the NRC staff's TR SE, a licensee adopting TR NEDC–33046 must confirm that the conclusions of the generic Tier 2 analysis are applicable to its facility.

As already stated, TR NEDC–33046 does not limit the number of PCIVs that can concurrently but separately be in an actions condition with an extended CT because the PCIV TS actions allow separate condition entry for each penetration flow path. The intent of Condition 6 is to ensure that, for multiple concurrently inoperable PCIVs, including those utilizing extended CTs, the licensee will evaluate the impact on risk to verify that the conditions of TR NEDC–33046 remain satisfied. As stated in Condition 3 of the NRC staff's model SE, a licensee's application to adopt TSTF–454, Revision 1, must provide supporting information that discusses the plant's CRMP and inoperable PCIV assessment program, the plant's conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), and the guidance contained in NUMARC 93–01, Section 11, as endorsed by RG 1.182 for the assessment of risk, including LERF and ICLERP resulting from PCIV maintenance.

Based on the above, the staff will revise Condition 6 of the model SE to clarify the applicability to Tier 3 CRMP as follows:

(6) Simultaneously utilizing the proposed extended CT for multiple inoperable PCIVs and the resulting impact on risk were not specifically evaluated by the BWROG. However, TR NEDC–33046 does state that multiple PCIVs can be out of service simultaneously during extended CTs and does not preclude the practice. Therefore, the licensee's application must provide supporting information that confirms that its Tier 3 configuration risk management program (10 CFR 50.65(a)(4)) requires that simultaneous application of an extended CT to more than one inoperable PCIV in separate penetration flow paths is evaluated. The purpose of this evaluation is to ensure that the cumulative risk of continued plant operation with multiple inoperable PCIVs utilizing extended CTs does not exceed the plant risk value, as determined by the analysis presented in TR NEDC–33046.

Comment 3 (as stated)

Condition 1 of Section 3.2, Evaluation of Proposed Changes, uses the terms ''incremental conditional core damage frequency (ICCDP)'' and ''incremental conditional large early release frequency (ICLERP).'' The word ''frequency'' in these two terms should be changed to ''probability.''

Response to Comment 3

The staff agrees. The editorial errors for definitions of incremental conditional core damage frequency (ICCDP) and incremental conditional large early release frequency (ICLERP) will be corrected in the model SE.

Other Changes to the Notice of Opportunity To Comment, Published in the Federal Register Dated May 25, 2005 (70 FR 30151)

In addition to the changes mentioned in the above discussion of comments, editorial changes, such as consistent use of ''TR'' in place of ''LTR,'' use of ''CT'' in place of ''AOT,'' etc., have been made without altering the original intent to the Notice of Opportunity for Comments published in the **Federal Register** dated May 25, 2005 (70 FR 30151).

As described in the model application prepared by the NRC staff, licensees may reference in their plant-specific applications for adopting this change to STSs, the model SE, model NSHC determination, and the environmental consideration in this ''Notice of Availability'' published in the **Federal Register**.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission; Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement

Technical Specification Task Force (TSTF) Change; Traveler No. TSTF–454, Revision 1, ''Extend PCIV Completion Times (NEDC–33046)''

1.0 Introduction

By application dated [ ], [Licensee] (the licensee) requested changes to the Technical Specifications (TSs) for [facility]. The proposed changes would revise TS 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' by extending to 7 days the completion time (CT) to restore an inoperable PCIV to operable status or to isolate the affected penetration flow path for selected primary containment penetrations with two (or more) PCIVs and for selected primary containment penetrations with only one PCIV.

2.0 Regulatory Evaluation

The existing Limiting Condition for Operation (LCO) 3.6.1.3, requires that each PCIV be operable. The operability of PCIVs ensures that the containment is isolated during a design-basis accident (DBA) and is able to perform its function as a barrier to the release of radioactive material. For boiling water reactor (BWR)/4 plants, if a PCIV is inoperable in one or more penetrations, the current required action is to isolate or restore the inoperable PCIV to operable status within 4 hours for penetrations with 2 PCIVs (except for the main steam line, in which case 8 hours is allowed), and within 4 hours for penetrations with a single PCIV (except for excess flow check valves (EFCVs) and penetrations with a closed system, and for other cases if justified with a plant-specific evaluation, in which case 72 hours is allowed). Regarding the leakage rate of EFCVs, 72 hours is also currently allowed to restore EFCV leakage to within limit. For BWR/6 plants, the current required actions are the same as those for the BWR/4 plants, with the exception that there are no TSs for EFCVs. The times specified for performing these actions were considered reasonable, given the time required to isolate the penetration and the relative importance of ensuring containment integrity during plant operation. In the case of a single EFCV PCIV or a single PCIV and a closed system, the specified CT takes into consideration the ability of the instrument and the small pipe diameter (associated with the EFCV) or the closed system to act as a penetration boundary.

On May 3, 2002, as supplemented by letter dated July 30, 2003, the BWR Owners Group (BWROG) submitted the generic Topical Report (TR) NEDC–33046, ''Technical Justification to Support Risk-Informed Primary Containment Isolation Valve AOT [Allowed Outage Time] Extensions for BWR Plants,'' which provided a risk-informed justification for extending the TS AOT (also referred to as CT), for a specific set of inoperable PCIVs from the current 4 hours or 72 hours to 7 days. Specifically, for BWR/4 plants, if a PCIV is inoperable in one or more penetrations, the proposed action is to isolate or restore the inoperable PCIV to operable status within 7 days for penetrations with 2 PCIVs (except for the feedwater isolation valves (FWIVs) and the residual heat removal (RHR) shutdown cooling suction line PCIVs, in which case the 4 hours is kept, and except for the main steam line isolation valves (MSIVs), in which case the 8 hours is kept) and within 4 hours for

penetrations with a single PCIV, except for EFCVs and penetrations with a closed system, in which case 7 days is allowed (and except for other cases if justified with a plant-specific evaluation, in which case the 72 hours is kept). Regarding the leakage rate of EFCVs, 7 days is also proposed to restore EFCV leakage to within the limit. For BWR/6 plants, the proposed actions are the same as those for the BWR/4 plants with the exception that for penetrations with 2 PCIVs, there is an additional exception to the 7-day CT (for the low pressure core spray system PCIVs, in which case the 4 hours is kept); and with the exception that there are no TSs for EFCVs.

The NRC staff used the guidance of Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis, November 2002'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications, August 1998,'' in performing its review of this TR. RG 1.174 provides the guidelines to determine the risk associated with the proposed change. RG 1.177 provides a three-tiered approach to evaluate the risks associated with proposed license amendments. The first tier evaluates the probabilistic risk assessment (PRA) model and the impacts of the changes on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations, should additional equipment outages occur during the CT. The third tier evaluates the licensee's configuration risk management program (CRMP) to ensure that the removal of equipment from service immediately prior to or during the proposed CT will be appropriately assessed from a risk perspective. The NRC staff's safety evaluation (SE) dated October 8, 2004, also discusses the applicable regulations and additional applicable regulatory criteria and guidelines that were considered in its review of TR NEDC–33046. By letter dated January 20, 2005, BWROG transmitted TR NEDC–33046–A to NRC, which incorporated the TR NEDC–33046, submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC in a letter and SE dated October 8, 2004.

3.0 Technical Evaluation

3.1 Statement of Proposed Changes

The proposed changes to STS 3.6.1.3 for BWR/4 and BWR/6 plants, as approved in TSTF–454, Revision 1, include:

1. For the Condition of one or more penetration flow paths with one PCIV inoperable in a penetration flow path with two [or more] PCIVs, the Completion Times for isolating the affected penetration (in Standard Technical Specification (STS) 3.6.1.3 Required Action A.1) are revised from ''4 hours except for main steam line *AND* 8 hours for main steam line,'' to ''4 hours [for feedwater isolation valves (FWIVs), residual heat removal (RHR) shutdown cooling suction line PCIVs, and Low Pressure Core Spray (LPCS) System PCIVs (NUREG–1434 only)] *AND* 8 hours for main steam line isolation valves (MSIVs) [*AND* 7 days except for FWIVs, RHR shutdown cooling suction line PCIVs, LPCS System PCIVs (NUREG–1434 only), and MSIVs.]'' For PCIVs not analyzed in NEDC–33046–A (*i.e.*, FWIVs and MSIVs), the current Completion Times of 4 hours and 8 hours of STS 3.6.1.3 Required Action A.1 are maintained; 4 hours for FWIVs and 8 hours for main steam lines (*i.e.*, MSIVs as described in the current Bases for STS 3.6.1.3 Required Action A.1). For PCIVs analyzed in NEDC–33046–A that did not meet the criterion for extension (*i.e.*, RHR shutdown cooling suction line PCIVs (for all BWRs) and LPCS System PCIVs (for BWR/5 and BWR/6 designs only)), the current Completion Time of 4 hours of STS 3.6.1.3 Required Action A.1 is maintained. The Completion Time for other PCIVs, associated with penetrations with two [or more] PCIVs, is extended to 7 days.

2. For the Condition of one or more penetration flow paths with one PCIV inoperable in a penetration flow path with only one PCIV, the Completion Times for isolating the affected penetrations (STS 3.6.1.3, Required Action C.1) are revised from ''[4] hours except for excess flow check valves (EFCVs) and penetrations with a closed system *AND* [72] hours for EFCVs and penetrations with a closed system,'' to ''[4] hours except for excess flow check valves (EFCVs) and penetrations with a closed system *AND* [7days] for EFCVs and penetrations with a closed system.'' (For NUREG–1434, the Completion Times for STS 3.6.1.3, Required Action C.1 are revised from ''[4] hours except for penetrations with a closed system *AND* [72] hours for penetrations with a closed system,'' to ''[4] hours except for penetrations with a closed system *AND* [7days] for penetrations with a closed system.'')

3. For the Condition of one or more [secondary containment bypass leakage rate,] [MSIV leakage rate,] [purge valves leakage rate,] [hydrostatically tested line leakage rate,] [or] [EFCV leakage rate] not within limit, for NUREG–1433, the Completion Time for restoring leakage rate to within limit, when the leakage rate exceeded is the EFCV leakage rate (in STS 3.6.1.3 Required Action D.1), is revised from ''[72 hours for hydrostatically tested line leakage [on a closed system] [and EFCV leakage]]'' to ''[72 hours for hydrostatically tested line leakage [on a closed system] [*AND* 7 days for EFCV leakage].'' (The EFCV leakage rate Completion Time change is not applicable to NUREG–1434.)

3.2 Evaluation of Proposed Changes

The NRC staff's SE on TR NEDC–33046, dated October 8, 2004, found that, based on the use of bounding risk parameters for General Electric (GE)-designed plants, for the proposed increase in the PCIV CT from 4 hours (for penetrations with 2 or more PCIVs) or 72 hours (for penetrations with a single EFCV PCIV, and penetrations with a single PCIV and a closed system) or 72 hours (for EFCV leakage) to 7 days, the risk impact of the proposed 7-day CT for the PCIVs, as estimated by core damage frequency (CDF), large early release frequency (LERF), incremental conditional core damage probability (ICCDP), and incremental conditional large early release probability (ICLERP), is consistent with the acceptance guidelines specified in RG 1.174, RG 1.177, and NRC staff guidance outlined in Chapter 16.1 of NUREG–0800, ''Standard Review Plan.'' The NRC staff found that the risk analysis methodology and approach used by the BWROG to estimate the risk impacts were reasonable and of sufficient quality. The NRC staff's October 8, 2004, SE also found the following:

> The Tier 2 evaluation did not identify any risk-significant plant equipment configurations requiring TSs, procedure, or compensatory measures. TR NEDC–33046 implements a CRMP (Tier 3) using 10 CFR 50.65(a)(4) to manage plant risk when PCIVs are taken out-of-service. PCIV reliability and availability will also be monitored and assessed under the maintenance rule (10 CFR 50.65) to confirm that performance continues to be consistent with the analysis assumptions used to justify extended PCIVs CTs.

3.2.1 Conditions and Commitment

The NRC staff's October 8, 2004, SE also found that certain conditions and a commitment must be addressed by licensees adopting TR NEDC–33046 (or TR NEDC–33046–A transmitted to NRC by letter dated January 20, 2005) in plant-specific applications. These conditions and the commitment, as clarified herein, that must be addressed

by licensees adopting TR NEDC–33046–A in plant-specific applications that seek approval of TSTF–454, Revision 1, for their plants, are as follows:

3.2.1.1 Conditions

1. Because not all penetrations have the same impact on CDF, LERF, ICCDP, or ICLERP, a licensee's application must provide supporting information that verifies the applicability of TR NEDC–33046, including verification that the PCIV configurations for the specific plant match the TR and that the risk parameter values used in the TR are bounding for the specific plant. Any additional PCIV configurations or non-bounding risk parameter values not evaluated by the TR should be included in the licensee's plant-specific analysis. [Note that PCIV configurations or non-bounding risk parameter values outside the scope of the TR will require NRC staff review of the specific penetrations and related justifications for the proposed CTs.]

2. The licensee's application must provide supporting information that verifies that external event risk, either through quantitative or qualitative evaluation, will not have an adverse impact on the conclusions of the plant-specific analysis for extending the PCIV CTs.

3. Because TR NEDC–33046 was based on generic plant characteristics, each licensee adopting the TR must provide supporting information that confirms plant-specific Tier 3 information in their individual submittals. The licensee's application must provide supporting information that discusses conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), as they relate to the proposed PCIV CTs and the guidance contained in NUMARC 93–01, Section 11, as endorsed by RG 1.182, ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.'' This should include verification that the licensee's maintenance rule program, with respect to PCIVs, includes a LERF and ICLERP assessment as part of the maintenance rule process.

4. The licensee's application must provide supporting information that verifies that a penetration remains intact during maintenance activities, including corrective maintenance activities. Regarding maintenance activities where the pressure boundary would be broken, the licensee must provide supporting information that confirms that the assumptions and results of the TR remain valid. This includes the assumption that maintenance on a PCIV will not break the pressure boundary for more than the currently allowed CT.

5. The licensee's application must provide supporting information that it will verify the operability of the remaining PCIVs in the associated penetration flow path before applying an extended CT for an inoperable PCIV.

6. Simultaneously utilizing the proposed extended CT for multiple inoperable PCIVs and the resulting impact on risk were not specifically evaluated by the BWROG. However, TR NEDC–33046 does state that multiple PCIVs can be out of service simultaneously during extended CTs and does not preclude the practice. Therefore, the licensee's application must provide supporting information that confirms that its Tier 3 CRMP (10 CFR 50.65(a)(4)) requires that simultaneous application of an extended CT to more than one inoperable PCIV in separate penetration flow paths is evaluated. The purpose of this evaluation is to ensure that the cumulative risk of continued plant operation with multiple inoperable PCIVs utilizing extended CTs does not exceed the plant risk value, as determined by the analysis presented in TR NEDC–33046.

7. The licensee must provide supporting information that verifies that the plant-specific probabilistic risk assessment (PRA) quality is acceptable for this application in accordance with the guidelines given in RG 1.174, ''An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-specific Changes to the Licensing Basis.'' To ensure the applicability of TR NEDC–33046 to a licensee's plant, each licensee requesting an amendment must provide additional information on PRA quality in the following areas:

a. Justification that the plant-specific PRA reflects the as-built, as-operated plant.

b. Applicable PRA updates including individual plant examinations (IPE) and individual plant examinations of external events (IPEEE) findings.

c. Conclusions of the peer review including any A or B facts and observations (F and Os) applicable to the proposed PCIV extended CTs.

d. The PRA quality assurance program and associated procedures.

e. PRA adequacy, completeness, and applicability with respect to evaluating the plant specific impact of the proposed PCIV extended CT.

3.2.1.2 Commitment

The RG 1.177 Tier 3 program ensures that, while the plant is in a LCO actions condition with an extended CT for restoring an inoperable PCIV to operable status, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition the inoperable PCIV or associated system is designed to mitigate and, as a result, increase plant risk beyond that determined by the TR analysis. A licensee's implementation of RG 1.177 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed PCIV extended CT impacts containment isolation and, consequently, LERF as well as CDF. Therefore, each licensee requesting extended CTs for PCIVs under TSTF–454, Revision 1, must commit to enhancing its CRMP, including those implemented under 10 CFR 50.65(a)(4), the maintenance rule, to include a LERF methodology and assessment. This commitment and the CRMP enhancements must be documented in the licensee's plant-specific application.

3.3 Staff Findings

The NRC staff has reviewed the proposed TS changes and finds that they are consistent with previous staff reviews of TR NEDC–33046, submitted by letter dated May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and SE dated October 8, 2004, which are incorporated in TR NEDC–33046–A, transmitted to NRC by letter dated January 20, 2005, and TSTF–454, Revision 1, and are acceptable. The NRC staff has also reviewed the licensee's supporting information and the statements regarding the above conditions and commitment and finds them acceptable. Therefore, the NRC staff finds that the increase in the CTs from 4 hours (for penetrations with 2 or more PCIVs) or 72 hours (for penetrations with a single EFCV PCIV, and penetrations with a single PCIV and a closed system) or 72 hours (for EFCV leakage) to 7 days is justified.

4.0 Regulatory Commitment

The licensee's letter dated [ ], contained the following regulatory commitment: [state the licensee's commitment and ensure that it satisfies the commitment in this SE, in section 3.2 above.]

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitment are best provided by the licensee's administrative processes, including its commitment management program. The above regulatory commitment does not warrant the creation of a license condition (item requiring prior NRC approval of subsequent changes).

5.0 State Consultation

In accordance with the Commission's regulations, the [State] State official was notified of the proposed issuance of the amendments. The State official had [Choose one: (1) No comments, OR (2) The following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding ([XX FR XXXXX, dated Month DD, YYYY]). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by the operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Model No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment extends the completion time (CT) for penetration flow paths with one valve inoperable from 4 hours or 72 hours to 7 days. The change is applicable to both primary containment penetrations with two (or more) primary containment isolation valves (PCIVs) and with one PCIV. This change is not applicable to the feedwater isolation valves (FWIVs), the residual heat removal (RHR) shutdown cooling suction line PCIVs, the low pressure core spray (LPCS) PCIVs (boiling water reactor (BWR)/6 only), the main steam isolation valves (MSIVs), and [list of plant-specific valves].

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the completion times (CTs) for restoring an inoperable primary containment isolation valve (PCIV) (or isolating the affected penetration) within the scope of the Boiling Water Reactor (BWR) Owners Group (BWROG) Topical Report (TR) NEDC–33046–A, ''Technical Justification to Support Risk-Informed Primary Containment Isolation Valve AOT [Allowed Outage Time] Extensions for BWR Plants,'' transmitted to NRC by letter dated January 20, 2005, from 4 hours and 72 hours to 7 days. PCIVs are not accident initiators in any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased.

PCIVs, individually and in combination, control the extent of leakage from the primary containment following an accident. As such, PCIVs are instrumental in controlling the consequences of an accident. However, the consequences of any accident previously evaluated are no different during the proposed extended CTs than during the existing CTs. As a result, there would be no significant increase in the consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes revise the CTs for restoring an inoperable PCIV or isolating the affected penetration within the scope of NEDC–33046–A, transmitted to NRC by letter dated January 20, 2005, from 4 hours and 72 hours to 7 days. PCIVs, individually and in combination, control the extent of leakage from the primary containment following an accident. The proposed CT extensions apply to the reduction in redundancy in the primary containment isolation function by the PCIVs for a limited period of time, but do not alter the ability of the plant to meet the overall primary containment leakage requirements. The proposed change does not alter the design, configuration, or method of operation of the plant. The proposed change does not involve a physical alteration of the plant and no new or different type of equipment will be installed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change revises the CTs for restoring an inoperable PCIV or isolating the affected penetration within the scope of the NEDC–33046–A, transmitted to NRC by letter dated January 20, 2005, from 4 hours and 72 hours to 7 days. PCIVs, individually and in combination, control the extent of leakage from the primary containment following an accident. The proposed CT extensions apply to the reduction in redundancy in the primary containment isolation function provided by the PCIVs for a limited period of time, but do not alter the ability of the plant to meet the overall primary containment leakage requirements. In order to evaluate the proposed CT extensions, a PRA evaluation was performed in TR NEDC–33046 submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and SE dated October 8, 2004. The PRA evaluation concluded that, based on the use of bounding risk parameters for GE-designed plants, the proposed increase in the PCIV CTs from 4 hours or 72 hours to 7 days does not alter the ability of the plant to meet the overall primary containment leakage requirements. It also concluded that the proposed changes do not result in an unacceptable ICCDP or ICLERP according to the guidelines of RG 1.177. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

Dated at Rockville, Maryland, this 4th day of December, 2005.

For the Nuclear Regulatory Commission.

David Terao,

Chief, Plant Licensing Branch G, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7272 Filed 12–12–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–06439]

Issuer Delisting; Notice of Application of Sony Corporation To Withdraw Its American Depositary Shares, Each Presenting One Share of Common Stock, No Par Value, From Listing and Registration on the Pacific Exchange, Inc.

December 7, 2005.

On December 1, 2005, Sony Corporation, a company incorporated in Japan (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its American Depositary Shares, each representing one share of common stock, no par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on October 26, 2005 to withdraw the Security from PCX. The Issuer stated that the primary factor considered by the Board was that most of the trading volume in the Security occurs on the New York Stock Exchange (''NYSE''), with very little trading volume occurring on PCX. The Security will continue to trade on NYSE. The Issuer believes that delisting the Security from PCX will cause no substantial inconvenience to the Issuer's shareholders and investors.

The Issuer stated in its application that it has complied with the rules of PCX by complying with all applicable laws in effect in Japan, the jurisdiction in which the Issuer is incorporated and by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on PCX and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before January 3, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–06439 or;

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 1–06439. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7265 Filed 12–12–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52909]

Extension of Order Regarding Broker-Dealer Financial Statement Requirements Under Section 17 of the Exchange Act

December 7, 2005.

The Securities and Exchange Commission (''Commission'') is extending its Order, originally issued on August 4, 2003,[1] and extended on July 14, 2004 (the ''2004 Order''),[2] under section 17(e) of the Securities Exchange Act of 1934 (''Exchange Act''), regarding audits of financial statements of broker-dealers that are not issuers (''non-public broker-dealers''). The 2004 Order provided that non-public broker-dealers may file with the Commission and may send to their customers documents and information required by section 17(e) certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2006.

Section 17(e)(1)(A) of the Exchange Act requires that every registered broker-dealer annually file with the Commission a certified balance sheet and income statement, and section 17(e)(1)(B) requires that the broker-dealer annually send to its customers its ''certified balance sheet.''[3] The Sarbanes-Oxley Act of 2002 (''Act'')[4] established the Public Company Accounting Oversight Board (''Board'')[5] and amended Section 17(e) to replace the words ''an independent public accountant'' with ''a registered public accounting firm.''[6]

The Act establishes a deadline for registration with the Board of auditors of financial statements of ''issuers,'' as that term is defined in the Act.[7] The Act does not provide a deadline for registration of auditors of non-public broker-dealers.

The 2004 Order expires January 1, 2006. Application of registration requirements and procedures to auditors of non-public broker-dealers is still being considered. The Commission is also considering whether to issue a concept release on the subject. The Commission has therefore determined that extending the Order is consistent with the public interest and the protection of investors.

Accordingly,

It Is Ordered, pursuant to section 17(e) of the Exchange Act, that non-

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] Exchange Act Release No. 48281, 68 FR 47375 (August 8, 2003).

[2] Exchange Act Release No. 50020, 69 FR 43482 (July 20, 2004).

[3] Exchange Act Rule 17a–5 requires registered broker-dealers to provide to the Commission and to customers of the broker-dealer other specified financial information.

[4] Public Law 107–204.

[5] Section 101 of the Act.

[6] Section 205(c)(2) of the Act.

[7] Section 2 of the Act defines ''issuer.'' Section 102 of the Act establishes a specific deadline by which auditors of issuers must register with the Board. Based on the statutory deadline of 180 days after the Commission determined the Board was ready to carry out the requirements of the Act, that date was October 22, 2003. *See* Exchange Act Release No. 48180 (July 16, 2003).

public broker-dealers may file with the Commission a balance sheet and income statement and may send to their customers a balance sheet certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2007.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7264 Filed 12–12–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52902; File No. SR–NASD–2005–128]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System

December 7, 2005.

I. Introduction

On November 1, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 rules governing the operation of the INET ECN (''INET System'' or ''System'') and fees for System services.

The proposed rule change was published for comment in the **Federal Register** on November 7, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description

On April 22, 2005, Nasdaq entered into definitive agreements to purchase INET ATS, Inc. (''INET''), a registered broker-dealer and member of NASD,[4] and operator of the INET System. Once acquired by Nasdaq, the INET System would immediately become a ''facility'' of a national securities association subject to the standards set forth in Sections 15A [5] and 19(b)(1) [6] of the Act and would be required to operate pursuant to formal system rules approved by the Commission.[7] Accordingly, in order to ensure that such rules are in place at the time of closing, Nasdaq proposes to establish rules governing the operation of its INET System. Proposed NASD Rule 4950 Series addresses, among other things, the INET System's order display and matching function, access standards, order types, time-in-force designations, out-bound order routing, order execution algorithm, clearly erroneous trade procedures, and other system features and standards.[8] Proposed NASD Rule 701(w) sets forth the fees applicable to participants, which currently include both NASD members and non-NASD members, in the INET System for order execution services. According to Nasdaq, such fees reflect those currently charged by INET to its participants. This fee schedule would apply for a temporary period of time, not to exceed 60 days after INET becomes a facility of Nasdaq.

Under the proposal, Nasdaq would initially operate INET on a platform separate from its Nasdaq Market Center and Brut platforms. For a temporary period of time ending no later than September 30, 2006, the INET System would continue to post its top-of-file quotes through the facilities of the National Stock Exchange (''NSX''), as it does today, and would remain subject to applicable rules and regulations of the NSX.[9] In the INET Notice, Nasdaq also stated that it anticipates that, soon after the formal close of the Nasdaq/INET transaction, it would merge the INET broker-dealer into Nasdaq's Brut broker-dealer and that Brut, as a single broker-dealer, would operate both trading platforms as separate systems with separate order processing and execution. As such, the New York Stock Exchange, Inc. (''NYSE'') would continue to serve as the designated examining authority for financial responsibility purposes for Nasdaq's broker-dealer, which would operate both the Brut and INET trading platforms.[10] Ultimately, Nasdaq intends to integrate all of its systems into a single technology platform and also combine all three of its system books into a single integrated book. In the INET Notice, Nasdaq stated that it expects to accomplish this process before the end of the third quarter of 2006.

Nasdaq proposes that these rules would be implemented immediately upon formal closing of the Nasdaq/INET transaction, and in no event more than two weeks after Commission approval. In the INET Notice, Nasdaq stated that it will provide to the Commission formal written notice of the closing date of the transaction. Such closing date, which must take place within two weeks of Commission approval, shall be the start date for the calculation of any temporary time period referred to in this filing. Nasdaq also stated that it would thereafter submit rule filings to include such closing date in its rules.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization [11] and, in particular, the requirements of Section 15A of the Act [12] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with 15A(b)(6) of the Act,[13] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the INET System would become a facility of a national securities association subject to the standards set forth in Sections 15A [14] and 19(b)(1) [15] of the Act when Nasdaq completes its purchase of INET. As such, NASD and, pursuant to NASD's plan of allocation and delegation of function to its subsidiaries, Nasdaq are obligated to file rules governing the operation of the INET System with the Commission. In addition, the Commission notes that, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52723 (November 2, 2005), 70 FR 67513 (''INET Notice'').

[4] In the INET Notice, Nasdaq stated that, as a member of NASD, INET is, and remains, subject to all NASD Rules applicable to its activities as a broker-dealer. In addition, INET would continue to participate in market surveillance and audit trail programs conducted by Nasdaq, NASD, and other self-regulatory organizations. INET would continue to act as a counter-party to all trades taking place in its system, for anonymity as well as a clearance and settlement purposes. INET would also continue to provide outbound order routing services to other market centers for its subscribers. *See* INET Notice at 67518.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78s(b)91).

[7] *See* INET Notice at 67518.

[8] *See* INET Notice.

[9] *See* INET Notice at 67518.

[10] *See* INET Notice at 67522.

[11] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78s(b)(1).

a broker-dealer, INET remains subject to the applicable NASD rules.

The Commission notes that the proposed rule change articulates Nasdaq's operation of INET and INET's integration with the Nasdaq Market Center and Brut. The rules that are the subject of this filing encompass a wide range of areas, including the INET System's order display and matching function, access standards, order types, time-in-force designations, out-bound order routing, order execution algorithm, clearly erroneous trade procedures, other system features and standards, and fees. The Commission believes that the proposed rules are reasonably designed to provide order interaction and price competition. Under the proposed rule change, INET will continue to participate in market surveillance and audit trail programs conducted by Nasdaq and NASD, and, for the temporary period during which it posts its top-of-file quotes through the facilities of the NSX, would also remain subject to all applicable rules and regulations of the NSX. In addition, the Commission notes that many of the proposed trading rules for the INET System are modeled on existing rules that apply to Nasdaq's Brut facility and the Nasdaq Market Center.[16] Accordingly, the Commission believes that granting approval to substantially similar rules for Nasdaq's INET facility is appropriate because such rules do not raise any novel or significant regulatory issues.

The Commission notes that, under this proposal, there is a temporary transition period during which INET would continue to operate in functionally the same manner in which it operates today; thus, the immediate transition to INET's operation as a Nasdaq facility should be seamless from a market structure perspective for market participants, in general, and INET subscribers, in particular. The Commission also emphasizes that INET, as a Nasdaq facility, will now be subject to Section 19 of the Act[17] and, to the extent that proposed rule changes are required to effectuate the Nasdaq/INET integration as described above, such proposed rule changes must be submitted to, and reviewed by, the Commission.

In addition, the Commission notes that several of Nasdaq's proposed rules would apply for a temporary period, allowing INET to continue certain of its current practices during a limited transition period immediately following the closing of the Nasdaq/INET transaction. For example, INET's proposed rules relating to the registration of all INET system participants as members of NASD,[18] clearly erroneous transactions,[19] limitation of liability,[20] and system service charges[21] only apply for a period of time not to exceed 60 days after INET becomes a facility of Nasdaq. Likewise, INET's display of its best priced orders through the facilities of the NSX may continue on a temporary basis until September 30, 2006.[22] The Commission notes that this proposal represents an interim step toward Nasdaq's ultimate plan to unify INET, the Nasdaq Market Center, and Brut into a single technology platform, which Nasdaq has committee to complete before the end of the third quarter of 2006. Finally, the Commission expects that, as Nasdaq has stated, soon after the formal close of the Nasdaq/INET transaction, Nasdaq will merge the INET broker-dealer into Nasdaq's Brut broker-dealer and that Brut as a single broker-dealer would operate both ECNs as separate systems, with separate order processing and execution, which would permit the NYSE to continue to serve as the designated examining authority for financial responsibility purposes for Nasdaq's wholly-owned broker-dealer. The Commission believes that this arrangement should held to eliminate actual, or the appearance of any, conflicts of interest between NASD and INET's broker-dealer operation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR–NASD–2005–128) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23946 Filed 12–12–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52898; File No. SR–PCX–2005–87]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Tracking Order Process

December 6, 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 26, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 22, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, the Exchange proposes to replace the existing PCXE rules describing the current ArcaEx Tracking Order Process[4] with new provisions setting forth a simplified price/time execution priority for the Tracking Order Process. Further, the PCX

[16] *See* Securities Exchange Act Release No. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005) (''Brut Approval Order''). On September 7, 2004, Nasdaq acquired Brut LLC, a registered broker-dealer and member of NASD, and operator of the Brut ECN (''Brut''). Once purchased by Nasdaq, Brut became a facility of a national securities association. Nasdaq initially operated Brut pursuant to a Temporary Conditional Exemption under Section 36 of the Act, which the Commission granted for a period of six months following Nasdaq's acquisition of Brut. *See* Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004). On November 3, 2004, NASD, through Nasdaq, filed with the Commission a proposed rule change to establish rules governing the operation of its Brut trading facility. The proposed rule change, as amended by Amendment No. 1 thereto, was published for comment in the **Federal Register** on January 31, 2005. *See* Securities Exchange Act Release No. 51078 (January 25, 2005), 70 FR 4902 (January 31, 2005) (SR–NASD–2004–173) (''Brut Notice''). The Commission received no comments on the Brut Notice, as amended by Amendment Nos. 1 and 2 thereto, and approved the proposed rule change, as amended, on March 7, 2005. *See* Brut Approval Order.

[17] 15 U.S.C. 78s(b).

[18] Proposed NASD Rule 4952.

[19] Proposed NASD Rule 4961.

[20] Proposed NASD Rule 4964.

[21] Proposed NASD Rule 7010(w).

[22] Proposed NASD Rule 4954(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No.1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

[4] *See* PCXE Rule 7.37(c).

proposes to modify the Tracking Order [5] for use in the revised Tracking Order Process.

The text of the proposed rule change, as amended, appears below. Additions are *italicized*; deletions are [bracketed].

* * * * *

Rules of PCX Equities, Inc.

Rule 7

Equities Trading; Section 3 Archipelago Exchange–Orders and Modifiers

Rule 7.31(a)–(e)—No Change.

(f) Tracking Order.

An undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process against orders equal to or less than the aggregate size of Tracking Order interest available at that price. If a Tracking Order is executed but not exhausted, the remaining portion of the order shall be cancelled, without routing the order to another market center or market participant.

[(1) Any User may submit an instruction to the Archipelago Exchange for the parameters of a Tracking Order at any time during the day. The parameters shall include:]

[(A) the maximum aggregate size, which is the aggregate size of all partial orders generated in the Tracking Order Process for a particular security that the User is willing to trade on that day;]

[(B) the maximum tradeable size, which is the maximum size of any partial order generated in response to an order entering the Tracking Order Process that the User is willing to trade on that day;]

[(C) the price in relation to the NBBO; and]

[(D) the relevant security.]

[(2) Once a User has submitted an instruction for the parameters of the Tracking Order, the instruction will remain in effect until closing or until the User has traded its maximum aggregate size for that day, whichever comes first.]

[(3) The Tracking Order Process rotation is as follows: Users who have submitted an instruction for the parameters of a Tracking Order will be assigned trades on a price/time rotating basis, such that within each price level, trades shall be assigned by the time the Users' instructions are received by the Archipelago Exchange. Within each price level, the first User to send an instruction for a Tracking Order will be the first User to be assigned a trade in the rotation process. For each order that enters the Tracking Order Process, the Tracking Order Process will rotate once through the Users in the rotation pattern. In each rotation, the User will be responsible for one trade up to the User's maximum tradeable size.]

[(4) The order described in the User's Tracking Order instruction will only be generated if:]

[(A) an unfilled round or mixed lot order enters the Tracking Order Process and]

[(B) it is such User's turn as determined by the Tracking Order Process rotation pattern.]

[(5) Each partial order generated in a rotation is a limit order in which:]

[(A) The price is set at or better than the NBBO at the time the unfilled order enters the Tracking Order Process, based on the User's parameters; and]

[(B) The size is (i) equal to the User's maximum tradeable size if the unfilled order is equal to or larger than the maximum tradeable size; or (ii) equal to the size of the unfilled order if the unfilled order is smaller than the maximum tradeable size.]

[(6) A User may modify the parameters of the instruction for the Tracking Order from time to time, as the Corporation permits.]

[(7) The Corporation shall suspend the Tracking Order Process for a security when a locked or crossed market exists in that security. The Tracking Order Process for that security shall resume when the locked or crossed market in that security no longer exists.]

[(8) Whenever in the judgment of the Corporation, because of an influx of orders, a system malfunction or other unusual conditions or circumstances, the interests of a fair and orderly market so require, the Corporation may suspend the Tracking Order Process. The Tracking Order Process shall resume when the Corporation determines that the conditions supporting the suspension no longer exist.]

(g) Odd Lot Tracking Order.

(1)—No Change.

(2) An *Odd Lot Dealer may submit an instruction to the Archipelago Exchange for the parameters of an* OLTO *at any time during the day. The parameters shall include:* [is a Tracking Order, as described in paragraph (f), in which:]

(A) The maximum aggregate size [is unlimited;]*, which is the unlimited aggregate size of all orders generated in the Odd Lot Tracking Order Process for a particular security that the Odd Lot Dealer is willing to trade on that day;*

(B) The maximum tradeable size [is] *up to* 99 shares, *which is the maximum size of any order generated in response to an order entering the Odd Lot Tracking Order Process that the Odd Lot Dealer is willing to trade on that day;*

(C) The price is set at the NBBO; and

(D) The *relevant* security [is one] in which the Odd Lot Dealer is registered as such; and

(E) The instruction must be in effect for the duration of Core Trading Hours; provided, however, the order described in the OLTO instruction will only be generated if:

(1) An unfilled odd lot market order enters the Odd Lot Tracking Order Process pursuant to Rule 7.37(c); or

(2) An odd lot limit order causes a locked market as described in Rule 7.56.

(3) Each order generated in a rotation is a limit order in which:

(A) The price is set at the NBBO at the time the unfilled order enters the Odd Lot Tracking Order Process, based on the Odd Lot Dealer's parameters; and

(B) The size is (i) equal to the Odd Lot Dealer's maximum tradeable size; or (ii) equal to the size of the unfilled order if the unfilled order is smaller than the maximum tradeable size.

(4) An Odd Lot Dealer may modify the parameters of the instruction for the Odd Lot Tracking Order from time to time, as the Corporation permits.

(5) The Corporation shall suspend the Odd Lot Tracking Order Process for a security when a locked or crossed market exists in that security. The Odd Lot Tracking Order Process for that security shall resume when the locked or crossed market in that security no longer exists.

(6) Whenever in the judgment of the Corporation, because of an influx of orders, a system malfunction or other unusual conditions or circumstances, the interests of a fair and orderly market so require, the Corporation may suspend the Odd Lot Tracking Order Process. The Odd Lot Tracking Order Process shall resume when the Corporation determines that the conditions supporting the suspension no longer exist.

(h)–(hh)—No Change.

* * * * *

Order Execution

Rule 7.37

* * * * *

(a)–(b)—No Change.

(c) Step 4: Tracking Order Process. During Core Trading Hours only, orders may be matched and executed in the Tracking Order Process as follows: If an order has not been executed in its entirety pursuant to paragraphs (a) and (b) of this Rule, the Archipelago Exchange shall match and execute any remaining part of the order in the Tracking Order Process in *price/time priority* [the following manner]; provided, however, any portion of an

[5] *See* PCXE Rule 7.31(f).

order received from another market center or market participant shall be cancelled immediately[:].

[(1) If the unfilled order is a mixed lot or round lot order, the order shall be matched against any Tracking Orders pursuant to the rotation pattern described in Rule 7.31(f)(3) for immediate execution thereafter. After the order has been matched against any Tracking Orders, if the order has not been executed in its entirety and the remaining part of the order is an odd lot, the odd lot order shall be executed in the Odd Lot Tracking Order Process, as described in paragraph (2).]

Odd Lot Tracking Order Process

[(2)]*(1)* If the unfilled order is an odd lot, *and there is an Odd Lot Dealer registered in that security,* the order shall be matched in the Odd Lot Tracking Order Process against any OLTOs pursuant to the *following* rotation pattern:

Odd Lot Dealers who have submitted an instruction for the parameters of an Odd Lot Tracking Order will be assigned trades on a price/time rotating basis, such that within each price level, trades shall be assigned by the time the Odd Lot Dealers' instructions are received by the Archipelago Exchange. Within each price level, the first Odd Lot Dealer to send an instruction for an Odd Lot Tracking Order will be the first Odd Lot Dealer to be assigned a trade in the rotation process. For each order that enters the Odd Lot Tracking Order Process, the Odd Lot Tracking Order Process will rotate once through the Odd Lot Dealers in the rotation pattern. In each rotation, the Odd Lot Dealer will be responsible for one trade up to the Odd Lot Dealer's maximum tradeable size. [described in Rule 7.31(f)(3) for immediate execution thereafter.]

(2) If there is no Odd Lot Dealer registered in that security, the odd lot will be routed away pursuant to PCXE Rule 7.37(d).

(d)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

To enhance participation on the ArcaEx facility, the Exchange proposes to restructure its Tracking Order Process by modifying the current rule text governing the Tracking Order Process to implement a simplified price/time priority execution process. In addition, the Exchange proposes to modify the existing Tracking Order for use in the revised and simplified Tracking Order Process.

Current ArcaEx Tracking Order Process

Current PCXE Rules 7.31(f) and 7.37(c) describe the Tracking Order Process. The purpose of the Tracking Order Process is to provide a final opportunity for execution against any remaining liquidity on the ArcaEx system before routing to an away market center. As currently written, Users [6] of the Tracking Order Process submit a Tracking Order instruction to ArcaEx based on certain parameters. ArcaEx generates orders based on these User instructions. Executions occur in a rotating manner pursuant to PCXE Rule 7.37(c). In general, the first User to send an instruction for a Tracking Order for each price level is the first User to be assigned a trade in the rotation process. With each rotation, a User who has entered a Tracking Order is responsible for one trade up to the User's maximum tradable size.

Proposed Changes to the Tracking Order Process

As proposed, the rule change would modify the current Tracking Order Process described above and replace it with a new process based on the submission of orders, rather than instructions, to be executed in price/time priority. Users would no longer be required to submit and maintain Tracking Order instructions to participate in the Tracking Order Process. Instead, Users would simply submit a Tracking Order (as described below) designed specifically to reside in the modified Tracking Order Process. ArcaEx would continue to process all orders residing in the modified Tracking Order Process after it processes orders entered into the other ArcaEx execution processes.[7] Within the Tracking Order Process, the modified Tracking Order would execute based on its price and time received as opposed to the price and time the instruction was received.

This filing also proposes changes to the existing Odd Lot Tracking Order Process.[8] The Odd Lot Tracking Order Process that is currently available for incoming odd lot orders would continue to exist and would be distinct from the Tracking Order Process which would be available for incoming mixed lot and round lot orders. Accordingly, the existing Tracking Order Process and associated assignment of trades on a price/time rotating basis would continue to apply to the Odd Lot Tracking Order Process. The rule text that previously resided in PCXE Rule 7.31(f)(3) would be inserted into PCXE Rule 7.37(c)(1) to describe the Odd Lot Tracking Order Process and revised to clarify that only Odd Lot Dealers [9] may be assigned trades under the Odd Lot Tracking Order Process.[10] Also, under the proposal, orders would only participate in the Odd Lot Tracking Order Process if there is an Odd Lot Dealer registered in that security. If no such dealer exists, the odd lot order would be routed away pursuant to PCXE Rule 7.37(d). Further, the proposal includes clarifying changes that the Odd Lot Tracking Order Process does not generate partial fills.

The Tracking Order

The rule proposal modifies an existing order type, the Tracking Order, for use in the revised Tracking Order Process. Currently, a User submits a Tracking Order instruction that includes specific parameters that must be entered including maximum aggregate size and maximum tradeable size. The revised Tracking Order is an undisplayed, priced order with a specified size that would be eligible for execution against other ArcaEx orders that have already been exposed to other ArcaEx execution processes and have not been executed in full. The Tracking Order would execute in the revised Tracking Order Process against an incoming order only if the size of the incoming order is less than or equal to the aggregate Tracking Order interest available at the price of the incoming order and the incoming order is not an odd lot order. If the size of any contra order exposed to the revised Tracking Order Process is greater than

[6] *See* PCXE Rule 1.1(yy).

[7] *See* PCXE Rule 7.37 for a description of the ArcaEx execution processes that precede the Tracking Order Process. These include the Directed Process, Display Process and Working Order Process.

[8] *See* PCXE Rule 7.37(c).

[9] *See* PCXE Rule 1.1(gg).

[10] Similarly, the rule text that describes the generation of Tracking Orders in PCXE Rule 7.31(f) and that also applies to Odd Lot Tracking Orders would be inserted in PCXE Rule 7.31(g). PCXE Rule 7.31(g) would also be further modified, as necessary, to accommodate such insertion.

the size of the aggregate Tracking Order interest residing in the Tracking Order Process at the executable price, such Tracking Orders would not execute against the contra order. For example, if a Tracking Order was entered for 300 shares and a contra order with a size of 301 shares was exposed to the Tracking Order Process (after being exposed to all other ArcaEx execution processes), the contra order would not execute against the Tracking Order and would route out of ArcaEx.

Tracking Orders would execute only if the price of the Tracking Order is equal to or better than prices found at away markets (and would therefore execute at the price of the NBBO at the time of execution or better).[11] If a Tracking Order is executed but not exhausted, the remaining portion of the Tracking Order shall be cancelled, without routing to another market center or market participant. Tracking Orders residing in the Tracking Order Process would be sorted and executed against in price/time priority. Tracking Orders may only be entered as round lots and are not displayed to any Users. However, mixed lot contra orders exposed to a Tracking Order would be eligible for execution against such Tracking Order (assuming the size of the contra order is equal to or less than the size of the Tracking Order).[12] An odd lot contra order would be exposed to an Odd Lot Tracking Order and eligible for execution against such Odd Lot Tracking Order as described above. In the circumstance when a Tracking Order receives a partial fill, the unexecuted portion of the Tracking Order would be cancelled. Because Tracking Orders may be cancelled and are only executed against once, the current provision in PCXE Rule 7.31(f)(8) that enables ArcaEx to suspend the Tracking Order Process because of an influx of orders, a system malfunction, or other unusual circumstances is no longer relevant and would be removed. In addition, the current provision in PCXE Rule 7.31(f)(7) is no longer relevant because the new Tracking Order Process would be integrated into existing order book processing, which is not suspended in the instance of a locked or crossed market. Accordingly, PCXE Rule 7.31(f)(7) would not be incorporated into the modified Tracking Order Process. Tracking Orders would not route to other market centers, would not be eligible for execution against other Tracking Orders, and would not execute against incoming ITS orders.

The Exchange believes that the implementation of the aforementioned rule changes relating to ArcaEx order processing would enhance order execution opportunities on ArcaEx. In particular, the Exchange believes the revisions to the Tracking Order Process and Tracking Order would simplify the Tracking Order Process and encourage order interaction on ArcaEx.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5) of the Act[14] in particular because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-PCX–2005–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–87. 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 PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-PCX–2005–87 and should be submitted on or before January 3, 2006.

[11] *See* PCXE Rule 7.37 which states that ''for an execution to occur in any Order Process, the price must be equal to or better than the NBBO.''

[12] PCX clarified that a contra order would be eligible for execution against such Tracking Order if the size of the contra order is equal to or less than the size of the Tracking Order. Telephone conversation between Bridget M. Farrell, Director, Strategy PCX/ArcaEx and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on December 1, 2005.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7263 Filed 12–12–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *20 Day Letter to Representative-Claimant's Benefits Withheld—20 CFR 404.1720, 404.1725, 404.1730(b), 404.1730(c)(2)(i) and (ii), 416.1520, 416.1525, 416.1530(b)—0960–NEW.* In a favorable decision where there are past-due benefits, SSA withholds a portion of those benefits for potential direct payment to a representative. 20 CFR 404.1730(c)(2)(i) requires a representative to make a timely request for fee approval if the representative wishes to receive direct payment. As a courtesy, SSA sends this letter to a representative before releasing withheld funds to the claimant. Respondents are representatives who wish to receive direct payment.

Type of Request: Collection in Use Without OMB Number.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 83 hours.

2. *Recommendation for Fee Greater Than $7000—Referral to Regional Chief Administrative Law Judge—20 CFR 404.1720, 404.1725, 404.1730(b), 404.1730(c)(2)(i) and (ii), 416.1520, 416.1525, 416.1530(b)—0960–NEW.* This letter refers an ALJ's recommendation on a fee petition to a Regional Chief Administrative Law Judge (RCALJ) with a courtesy copy to the representative. The RCALJ, who is an SSA employee, will subsequently inform the representative of the approved fee. Respondents are representatives with fee petitions greater than $7000.

Type of Request: Collection in Use Without OMB Number.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 17 hours.

3. *Request for DDS Assistance in Obtaining Consultative Examination—20 CFR 404.1512, 404.1513(a), (b) and (e), 404.1514, 404.1517, 404.1546, 416.912, 416.913(a), (b) and (e), 416.917, 416.946—0960–NEW.* SSA requires that consultative examinations be scheduled through the state DDSs. When an ALJ believes a CE is required, this form is used to transmit the request, and a courtesy status letter is sent to the claimant. Respondents are claimants requesting DDS assistance in obtaining consultative examinations.

Type of Request: Collection in Use Without OMB Number.

Number of Respondents: 102,000.

Frequency of Response: 1.

Average Burden Per Response: 35 minutes.

Estimated Annual Burden: 59,500 hours.

4. *Request for Evidence from Doctor or Hospital—20 CFR 404.1512, 404.1513(a), (b), and (e), 404.1514, 416.912, 416.913(a), (b) and (e), 416.914—0960–NEW.* Claimants are required to provide medical evidence of their impairment(s) in pursuing a disability claim. SSA uses these forms to request medical evidence from sources (doctors and hospitals) where the claimant has been treated, seen or otherwise evaluated. Respondents are doctors and hospitals where the claimant has been evaluated.

Type of Request: Collection in Use Without OMB Number.

Number of Respondents: 20,000.

Frequency of Response: 20.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 100,000 hours.

5. *Request for School Records—20 CFR part 416, subpart I, 416.906, 416.913, 416.946, 404, subpart P, Appendix 1—0960–NEW.* School records are pertinent evidence in a childhood claim for disability benefits. ALJs use this for to request that evidence. This letter will be used to request school records from the school(s) which the claimant has attended for evidence relative to the claimant's impairments or ability to do age-appropriate activities. Respondents are the school(s) which the claimant has attended.

Type of Request: Collection in Use Without OMB Number.

Number of Respondents: 10,000.

Frequency of Response: 6.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 30,000 hours.

6. *20 CFR part 429, subpart 100, Filing Claims Under the Federal Tort Claims Act—20 CFR 429.101–429.110—0960–0667.* SSA uses the information provided to investigate and determine whether to make an award, compromise, or settlement under the Federal Tort Claims Act (FTCA). The information is only used by those Agency employees who need the information in the scope of their official duties. The respondents are individuals/entities making a claim under the FTCA.

Type of Request: Extension of an OMB-approved information collection.

[15] 17 CFR 200.30–3(a)(12).

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
429.102; 429.103	1	1	1	1
429.104(a)	30	1	5	2.5
429.104(b)	25	1	5	2
429.104(c)	2	1	5	.16
429.106(b)	10	1	10	1.6

Total Estimated Annual Burden: 7 hours

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Application for Mother's or Father's Insurance Benefits—20 CFR 404.339–404.342, 20 CFR 404.601–404.603—0960–0003. SSA collects the information on the SSA–5-F6 to entitle an individual to his/her mother's and father's insurance benefits. The respondents are individuals applying for entitlement to their mothers' or fathers' benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

2. Missing and Discrepant Wage Reports Letter and Questionnaire—26 CFR 31.6051–2—0960–0432. Each year employers report the wage amounts they paid their employees to IRS for tax purposes, and, separately, to SSA for retirement and disability coverage purposes. These amounts should be the same; however, each year many employer wage reports received by SSA are less than those reported to IRS. Through Forms SSA–L93, 95, and 97, SSA attempts to reconcile the amounts to ensure employees receive full credit. The respondents are employers who reported less wage amounts to SSA than they did to IRS.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 359,999.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 180,000 hours.

3. Marital Relationship Questionnaire—20 CFR 416.1826—0960–0460. Form SSA–4178 provides a nationally uniform vehicle for collection of information to determine for Supplemental Security Income (SSI) purposes whether unrelated individuals of the opposite sex who live together are holding themselves out to the public as husband and wife. The information is necessary to determine whether correct payment is being made to SSI couples and individuals. The respondents are applicants for, and recipients of, SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

4. Information Collection Requirements for Title VIII of the Social Security Act—20 CFR 408.202(d), 408.210, 408.230(a), 408.232(a), 408.320, 408.305, 408.310, 408.315, 408.340, 408.345, 408.351(d) and (f), 408.355(a), 408.360(a), 408.404(c), 408.410, 408.412, 408.420(a) and (b), 408.430, 408.432, 408.435(a) and (b), 408.437(b), (c) and (d)—0960–0658. Section 251 of the ''Foster Care Independence Act of 1999'' added Title VIII to the Social Security Act (Special Benefits for Certain World War II Veterans). Title VIII allows, under certain circumstances, the payment of a monthly benefit by the Commissioner of Social Security to a qualified World War II veteran who resides outside the United States. The accompanying regulations set out the requirements an individual must meet in order to qualify for and become entitled to Special Veterans Benefits (SVB). The respondents are individuals who are applying for benefits under Title VIII of the Social Security Act.

Section number	Number of respondents	Frequency of response	Average burden per response (hrs.)	Estimated annual hour burden
§ 408.202(d); § 408.210; § 408.230(a); § 408.305; §§ 408.310–.315	1	1	1	1
§ 408.232(a)	5	1	.25	1.25
§ 408.320	5	1	.25	1.25
§ 408.340	5	1	.25	1.25
§ 408.345	2	1	.25	.50
§ 408.351(d) & (f)	2	1	.50	1
§ 408.355(a)	5	1	.25	1.25
§ 408.360(a)	2	1	.25	.50
§ 408.404(c)	20	1	.25	5
§§ 408.410–412	20	1	.25	5
§ 408.420(a), (b)	230	1	.25	58
§§ 408.430 & .432	215	1	.50	108
§ 408.435(a), (b),(c)	230	1	.25	58
§ 408.437(b), (c),(d)	20	1	.50	10

Total Estimated Annual Burden: 252 hours.

Dated: December 7, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E5–7242 Filed 12–12–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cargo Restraint Strap Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on draft Technical Standard Order (TSO) C–172, Cargo Restraint Strap Assemblies. This draft TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their Cargo Restraint Strap Assemblies must meet to be identified with the appropriate TSO marking.

DATES: Comments must be received on or before January 27, 2006.

ADDRESSES: Send all comments on this proposed TSO to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch (AIR–120), 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Jan Risheim. Or, you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Risheim, AIR–120, Room 815, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (425) 227–2209, fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in room 815 at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final TSO.

Background

Cargo restraint strap assemblies are generally used to restrain cargo loaded onto pallets for transport in the cargo hold of aircraft. Cargo restrain strap assemblies are available from commercial sources but generally do not carry an FAA design or production approval. This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards their cargo restraint strap assemblies must first meet in order to obtain approval and be identified with the applicable TSO marking. The TSO marking provides evidence of an FAA design and production approval to the minimum performance standard identified in the proposed TSO.

How To Obtain Copies

You can view or download the draft TSO from its online location at: *http://www.faa.gov/aircraft/draft_docs/.* At this Web page, select ''Technical Standard Orders.'' At the TSO page, select ''Proposed TSOs.'' For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Note, SAE International documents are copyrighted and may not be reproduced without the written consent of SAE International. You may purchase copies of SAE International documents from: SAE International, 400 Commonwealth Drive, Warrendale, PA 15096–0001, or directly from their Web site: *http://www.sae.org/.*

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

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–23934 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–882 (Sub–No. 2X)]

Minnesota Commercial Railway Company—Discontinuance of Trackage Rights Exemption—in Washington County, MN

The Minnesota Commercial Railway Company (MNNR) has filed a verified notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Services* to discontinue trackage rights over a 0.99-mile line of railroad owned by BNSF Railway Company (BNSF) between milepost 11.81 and milepost 12.80, in Stillwater, Washington County, MN.[1] This line traverses United States Postal Service Zip Code 55082.[2]

MNNR has certified that: (1) No local traffic has been handled to or from any customer for at least 2 years; (2) no overhead traffic has been handled on the line for at least 2 years and, the line is not capable of handling overhead traffic as it is stub-ended; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.12 (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 discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 12, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] and

[1] MNNR's trackage rights were the subject of an exemption in *Minnesota Commercial Railway, Inc.—Trackage Rights Exemption—Burlington Northern Railroad Company,* Finance Docket No. 31603 ICC served Feb. 26, 1990).

[2] BNSF received abandonment authority for the 0.99-mile line segment in *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Washington County, MN,* STB Docket No. AB–6 (Sub-No. 413X) (STB served May 28, 2004). The May 28 notice stated that, if consummation has not been effected by BNSF's filing of a notice of consummation by May 28, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. Also, on April 22, 2005, BNSF filed a request to extend the consummation deadline until December 31, 2005, and by decision served May 10, 2005, that deadline was extended until December 31, 2005. In any event, BNSF may not consummate abandonment until MNNR receives authority to discontinue its trackage rights over the line.

[3] 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.

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] must be filed by December 23, 2005. Petitions to reopen must be filed by January 3, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

BNSF previously filed an environmental and historic report which addressed the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) based on the information in that report by December 16, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, and historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 6, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–23931 Filed 12–12–05; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Tuesday,
December 13, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Brodiaea filifolia* (thread-leaved brodiaea); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Brodiaea filifolia* (thread-leaved brodiaea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), are designating critical habitat for the federally threatened *Brodiaea filifolia* (thread-leaved brodiaea) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 597 acres (ac) (242 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Los Angeles and San Diego counties, California. Lands in Orange, Riverside, and San Diego counties that are covered by approved and draft habitat conservation plans are excluded under section 4(b)(2). Lands owned or controlled by the Department of Defense that are covered by an Integrated Natural Resource Management Plan (INRMP) that provides a benefit to the species are exempt from critical habitat under section 4(a)(3) of the Act. As a result of revisions based on peer and public comments and a re-evaluation of methodology and mapping, approximately 4,093 ac (1,656 ha) in Los Angeles, San Bernardino, Orange, and San Diego counties proposed as critical habitat were removed or excluded from this final designation. Lands designated as critical habitat are under Federal and private ownership. No Tribal lands are included in this critical habitat designation.

DATES: This rule becomes effective on January 12, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760–431–9440). The final rule, a list of references cited, the economic analysis, and maps will also be available on the Internet at *http://carlsbad.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760–431–9440; facsimile 760–431–9624).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 470 species or 37.5 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference for the conservation of many species.

We note, however, that the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, found our definition of adverse modification was invalid. In response to the decision, the Director has provided guidance to the Service based on the statutory language. In this rule, our analysis of the consequences and relative costs and benefits of the critical habitat designation is based on application of the statute consistent with the Ninth Circuit's ruling and the Director's guidance.

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 the limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment and, in some cases, the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated

earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

By 1998, when the species was listed, at least 25 percent of the known *Brodiaea filifolia* populations or occurrences had been eliminated by urbanization and agricultural conversion (63 FR 54975, October 13, 1998). Urban development continues to be a threat to this species. Habitat for the species is also threatened by off-road vehicle use; non-agricultural grading and disking for weed control; clearing for firebreaks; alteration of existing hydrologic conditions resulting from construction and operation of flood control structures; over-grazing; and competition from non-native plant species (USFWS 1998, RECON 1999, CNDDB 2005). Occurrences of *B. filifolia* in Orange County and some in San Diego County are threatened by the perennial *Cynara cardunculus* (artichoke thistle or cardoon) (CNDDB 2005). *B. filifolia* and its habitat are also threatened by dumping of manure and sewage sludge on occupied habitat along the San Jacinto River in western Riverside County (Roberts *in litt.* 2005). This material can alter the soil chemistry and lead to changes in the vegetation sustainable on the sites.

Previous Federal Actions

For more information on previous Federal actions concerning *Brodiaea filifolia*, refer to the final rule listing the species as threatened, published in the **Federal Register** on October 13, 1998 (63 FR 54975), and the proposed critical habitat designation published in the **Federal Register** on December 8, 2004 (69 FR 71284). A recovery plan for *B. filifolia* has not yet been completed. The following text discusses Federal actions that occurred subsequent to the listing.

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 *Brodiaea filifolia* (*Center for Biological Diversity et al.* v. *Department of the Interior et al.*, CV 01–2101). A second lawsuit asserting the same challenge was filed by the Building Industry Legal Defense Foundation (BILD) on November 21, 2001 (*Building Industry Legal Defense Foundation* v. *Department of the Interior et al.*, CV 01–2145). Both cases were consolidated on March 19, 2002, and all parties agreed to remand the critical habitat determinations to the Service for additional consideration. On July 1, 2002, the U.S. District Court for the Southern District of California directed us to publish a new prudency determination and, if prudent, propose critical habitat for *B. filifolia* on or before November 30, 2004, and to publish a final rule on or before November 30, 2005.

In the final listing rule, we determined that critical habitat was not prudent for *Brodiaea filifolia* because such designation would provide no benefit over that provided by listing on private property where the species occurs (63 FR 54975). The courts have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a ''not prudent'' finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280). Accordingly, we withdrew our previous determination that the designation of critical habitat was not prudent for *B. filifolia* and determined that critical habitat designation for this species is prudent. We had sufficient information necessary to identify specific features essential to the conservation of *B. filifolia* and proposed critical habitat for this species on December 8, 2004 (69 FR 71284). With the publication of this rule, we are designating final critical habitat for *B. filifolia* in compliance with the court's order.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat designation. We also invited public comment through the publication of notices on December 17, 2004, in *The Press-Enterprise*, Riverside, CA; *San Diego Union-Tribune*, San Diego, CA; *Orange County Register*, Santa Ana, CA; and the *Los Angeles Times*, Los Angeles, CA. The initial comment period ended February 7, 2005. There were no requests for public hearings.

During the comment period that opened on December 8, 2004, and closed on February 7, 2005, we received 19 comment letters directly addressing the proposed critical habitat designation: 4 comment letters were received from 3 peer reviewers, 2 from Federal agencies, and 13 from organizations or individuals. We received 2 additional comment letters that were illegible. We attempted to contact the authors of the letters but received no response; therefore, we could not consider the information. Thirteen commenters supported the designation of critical habitat for *Brodiaea filifolia*, and three opposed the designation. Three letters included comments or information, but did not express support or opposition to the proposed designation.

A second comment period to consider the draft economic analysis of proposed critical habitat for *Brodiaea filifolia* opened on October 6, 2005, and closed on October 20, 2005. During the comment period we received 6 letters: 5 from organizations or individuals and 1 from a local government agency. In opening the comment period on the draft economic analysis, we also reopened the comment period on our critical habitat proposal. Comments received during both comment periods were grouped into general issue categories relating to the proposed designation or the draft economic analysis.

Peer Review

In accordance with our joint policy published on July 1, 1994 (59 FR 34270), we solicited review of our proposed rule from at least three appropriate independent specialists/experts. The purpose of such review is to ensure our final designation is based on scientifically sound data, assumptions, and analyses. We solicited peer review from four 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 three of the peer reviewers. The peer reviewers supported the designation; however, they expressed concern about errors and omissions in the proposal, including the exclusion of critical habitat on lands covered by Habitat Conservation Plans (HCP). Comments from peer reviewers and other commenters are addressed in the following summary, and corrections and information are incorporated into the final rule as appropriate.

Peer Reviewer Comments Related to Previous Federal Actions, the Act, and Implementing Regulations

Similar comments that were received from other commenters are addressed in this section to avoid redundancy.

(1) *Comment:* Two peer reviewers requested that we provide a review of the unique status of plants under the Act, including the limited protection plants are provided under section 9 of the Act and the pros and cons of critical habitat designation for plants. Another

commenter indicated that *Brodiaea filifolia* receives substantial protection under the California Endangered Species Act (CESA) and the California Environmental Quality Act (CEQA) and does not require special management considerations or protection.

Our Response: Brodiaea filifolia is listed as an endangered species under the CESA. This allows the species to receive greater attention during the land use planning process by local governments, public agencies, and landowners. State listed plants are protected from removal, except by permit or agreement from the California Department of Fish and Game (CDFG). However, listing under the CESA doesn't remove all conservation threats to the species. Areas that contain features essential to the conservation of *B. filifolia* and that may require special management considerations or protection would still warrant critical habitat designation under the Act. The benefits and limitations of critical habitat designation for *B. filifolia* are addressed in several different sections throughout this document, including the ''Effects of Critical Habitat Designation,'' and ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act.''

Peer Reviewer Comments Related to Life History, Habitat Characteristics, and Ecological Considerations

(2) *Comment:* Three peer reviewers and five other commenters provided additional information, clarifications, and references for aspects of the biology, associated vegetation, and soil preferences of *Brodiaea filifolia*. One peer reviewer considered ours an excellent overview of the biology of the species but lacking two references they cited.

Our Response: We appreciate additional information and clarification and, where appropriate, we have incorporated this into the final rule.

(3) *Comment*: One peer reviewer and one individual stated that we should have cited more recent information, including the California Natural Diversity Database (CNDDB), regarding the historical range of *Brodiaea filifolia*, pointing out that some new occurrences have been discovered.

Our Response: In developing the proposed rule we used data compiled from the CNDDB database in 2003 as well as an update in 2004 (CNDDB 2003; 2004). This is a running database that includes periodic updates of existing occurrence information and new occurrence records. There was one occurrence of *Brodiaea filifolia* identified in the 2004 update of the CNDDB that we overlooked. This occurrence is located in an unincorporated area of central San Diego County near Lake Hodges. Fortunately, this occurrence of about 688 plants is being conserved under a Minor Amendment to the San Diego County MSCP.

Another occurrence in the same area was not entered into the CNDDB until April 6, 2005 (CNDDB 2005); therefore, we were not able to consider it in the proposed rule. It is not possible to include an area in this final critical habitat designation that was not identified in the proposed rule. Because we are under a court deadline to complete this final rule, the publication of a revised proposed rule to include this area for public review and comment could not have been completed in time to comply with the court's deadline.

(4) *Comment*: One peer reviewer cites the dumping of sewage sludge as the most serious threat to *Brodiaea filifolia* along the San Jacinto River habitat in Riverside County. The peer reviewer also stated that these deposits alter the soil chemistry.

Our Response: This comment is appreciated and a discussion of this threat has been incorporated into the ''Background'' section of this final rule.

(5) *Comment*: A peer reviewer and two individuals provided differing views on the issue of translocation. One view asserted that translocation may not have a high chance for success. The other perspective considers it premature to state that translocation is a threat to the species. One peer reviewer requested that we discuss all of the translocated populations.

Our Response: We are uncertain about the long-term viability of translocated populations and their contribution to the species as a whole, therefore, we did not specifically include them in this designation. However, translocated populations may contribute to the long-term survival and recovery of the species. Additional long-term monitoring for genetic diversity and the reproductive impact of these populations is warranted. Only issues specifically related to the critical habitat designation are discussed in this final rule, therefore, we have not included a broad overview of translocated populations in this document.

Peer Reviewer Comments Related to Critical Habitat, Primary Constituent Elements, and Methodology

(6) *Comment*: Two peer reviewers and two other commenters expressed concern about errors and lack of attribution to citations in the proposed rule, suggesting that it be rewritten and re-released. Several questions, additions, and corrections to statements and information relating to proposed critical habitat units were provided by peer reviewers and other commenters.

Our Response: Because of a court deadline to complete this final rule, we could not publish a revised proposed rule for public review and comment in time to comply with the court's deadline. One of the purposes of releasing the proposed rule and draft economic analysis for public review and comment is to obtain substantive information and materials related to the proposed critical habitat designation. We appreciate receiving additional information, corrections, and clarifications that were useful in our re-evaluation of the proposed units and unit descriptions. Where appropriate, we have included this information and answers to specific questions in the final rule. See the ''Summary of Changes from Proposed Rule'' section for a review of changes in the final designation.

(7) *Comment*: One peer reviewer stated that we did not provide information on our reasoning for proposing critical habitat in a number of locations in Riverside and San Diego counties.

Our Response: We have re-evaluated areas included in proposed critical habitat. This final designation reflects mapping refinements, our re-evaluation of proposed areas under section 3(5)(A), and exclusions under sections 4(a)(3) and 4(b)(2) of the Act. Please refer to the ''Criteria Used to Identify Critical Habitat,'' and the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' for more information.

(8) *Comment*: Two peer reviewers suggested literature citations, with one requesting that we cite final versions rather than draft documents, and the other requesting that the references cited list be published with the text of the rule and posted on the Internet.

Our Response: Where appropriate, we have incorporated these suggestions in this rule. We cite the most current version of documents available. As stated in the ''References Cited'' section of the rule, a list of references cited is available upon request from the Carlsbad Fish and Wildlife Office. We will also make this list available on the Internet at *http://carlsbad.fws.gov*.

(9) *Comment*: One peer reviewer and a public commenter questioned our use of a draft version of Bramlet and White 2004 (erroneously cited as White and Bramlet 2004 in the proposed rule).

Our Response: We referred to a working table of occurrences (Table 3) during the preparation of the proposed rule. The information in this table was considered to be one of the best available on the occurrences of *Brodiaea filifolia*. Only occurrences corroborated from other sources are considered in this final rule.

(10) *Comment*: Two peer reviewers and two public commenters variously stated that the section of the proposed rule titled ''Designation of Critical Habitat Provides Little Additional Benefit to Species'' is generic, editorializing, out of place in a proposal, and political. One commenter wanted us to point to the research that specifically justifies this claim in relation to *Brodiaea filifolia*.

Our Response: The section referenced by the commenters is intended to be a general statement regarding our position on the designation of critical habitat. As discussed in the preamble of this and other critical habitat designation rules, we believe that, in most cases, conservation mechanisms provided through section 7, 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 landowners and Tribes provide greater incentives and conservation benefits than does the designation of critical habitat.

(11) *Comment*: One peer reviewer and one commenter requested a definition of PCE. They also suggested clarifications for PCEs relating to habitat descriptions, soil types, slopes, and associated vegetation types.

Our Response: As stated in the ''Primary Constituent Elements'' (PCE) section of the proposed rule (69 FR 71284), PCEs are those physical or biological features essential to the conservation of a species, and that may require special management considerations or protection. The PCEs for *Brodiaea filifolia* were based on the best available information relating to the species' occurrences and its soil and vegetation associations. Please refer to the ''Methods'' section of this final rule for a discussion of all information sources used to define the PCEs for *B. filifolia*.

(12) *Comment*: Two peer reviewers noted the ability of *Brodiaea filifolia* to persist on disturbed, degraded, or disked sites and the suitability of these sites if allowed to recover, especially by natural flooding processes.

Our Response: It is likely that some areas supporting occurrences of *Brodiaea filifolia* have been degraded to some degree. The areas included in proposed critical habitat and areas excluded from proposed designation under section 4(b)(2) of the Act were identified as being occupied and containing the physical or biological features essential to the conservation of the species. Lands included in this final designation are occupied and contain the features essential to the conservation of *B. filifolia.* Please refer to the ''Application of Section 3(5)(A), Exemption Under 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' section for information about areas removed, exempted, or excluded from critical habitat.

(13) *Comment:* Two peer reviewers and three other commenters provided information and suggestions related to the species' biology, habitat description, and condition, as well as boundaries of the critical habitat subunits and areas containing habitat with features essential to the conservation of this species that were excluded from critical habitat in our proposal. One peer reviewer also noted that some units included unsuitable habitat. One commenter recommended we change the configuration of boundaries in the Rancho Santalina/Loma Alta subunit to better represent the areas containing features essential to the conservation of *Brodiaea filifolia.*

Our Response: We appreciate the information and suggestions from these commenters and, where appropriate, we have incorporated the information on subunit descriptions into this final rule. Some of the commenters discussed making the boundaries of critical habitat subunits and areas containing habitat with features essential to the conservation of this species more precise. We made such changes where appropriate. We have attempted to map the boundaries to exclude developed land; however, we may not have been able to exclude all developed land or land that does not contain the PCEs. Any such structures and the land under them inadvertently left inside the mapped critical habitat boundaries have been excluded in the text portion of the rule, and are not designated as critical habitat. Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Some commenters suggested including additional areas in the proposed subunits or making boundary adjustments in areas containing features essential to the conservation of the species that were excluded from proposed designation. However, these commenters did not provide sufficient site-specific data for us to adequately evaluate their recommendations. We reviewed the proposed Santalina/Loma Alta subunit and determined it does not meet the definition of critical habitat under section 3(5)(A) of the Act. Please refer to the section ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information.

(14) *Comment:* Two peer reviewers and one commenter questioned our use of occurrences with 1,000 or more plants as a measure of whether an area contained habitat with features essential to the conservation of *Brodiaea filifolia.* One commenter questioned the science behind our decision not to propose all occurrences of *B. filifolia* in Orange and San Diego counties as critical habitat.

Our Response: In developing our proposal, we relied on several types of information to determine whether an occurrence of *Brodiaea filifolia* was considered significant. As outlined in the ''Criteria Used to Identify Critical Habitat'' section, we evaluated population estimates, soil types, associated vegetation, and elevation. We also evaluated the location of occurrences in relation to the range of the species. For example, occurrences that supported less than 1,000 plants, but which were on alkali playas were considered to be significant. For an explanation of why more areas in Orange and San Diego counties were not included in the final designation, please refer to the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' portion of this rule.

(15) *Comment:* One peer reviewer and one individual questioned the value of including small units (e.g., 6b (Mesa Drive)), or those with few plants (e.g., subunits 4d (Prima Deschecha), 4f (Talega/Segunda Deschecha), and 6a (Alta Creek)) as critical habitat.

Our Response: We considered occurrence information, soil types, vegetation association and other factors in our re-evaluation of proposed subunits. As a result of our re-evaluation, several proposed subunits, including 4d, 4f, and 6a, were removed from final designation. Subunit 6b (Mesa Drive) is relatively small, covering about 5 ac (2 ha), but it supports a significant occurrence of *Brodiaea filifolia* and contains features essential to the conservation of the species; therefore, it was included in proposed critical habitat. However, subunit 6b was excluded from final designation under section 4(b)(2) of the Act. Please see the ''Summary of Changes from Proposed Rule,'' and

''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' sections for more information.

(16) *Comment:* One peer reviewer recommended that we add Domino or Chino alkali soils to the description of PCEs because *Brodiaea filifolia* occurs on these soil types in Riverside County.

Our Response: We have reviewed this information and have included these soil types in our definition of the PCEs for *Brodiaea filifolia.*

(17) *Comment:* Two peer reviewers and one Federal agency commenter questioned our inclusion of subunits 5a (Miller Mountain) and 5b (Devil Canyon) in proposed critical habitat because most plants in subunit 5a and some in subunit 5b are hybrids between *Brodiaea filifolia* and *Brodiaea orcuttii.* One peer reviewer noted that hybrids occur in the City of San Marcos and on Marine Corps Base, Camp Pendleton (Camp Pendleton), although specific numbers and locations were not provided. One peer reviewer stated that plants in areas containing features essential to the conservation of the species in Riverside County are prone to hybridization. Another commenter, knowledgeable about the genetics of *Brodiaea*, stated that *B. filifolia* and *B. orcuttii* form a unique line and could hybridize only with each other.

Our Response: We acknowledge that within subunits 5a and 5b, there are substantial numbers of plants that are hybrids of *Brodiaea filifolia* and *Brodiaea orcuttii* (Boyd et al. 1992). The population in subunit 5a is considered to be largely hybridized and we cannot determine that they can be considered as contributors to the long-term conservation of the species; therefore, we removed this subunit from consideration. Although plants in subunit 5b also show some hybridization, the extent of the hybridization is less. The occurrence of *B. filifolia* in subunit 5b is significant and is found at one of the highest elevations within the range of the species. We have included the portion of land in subunit 5b that is occupied by *B. filifolia* and contains features essential to the conservation of the species in this final designation. Please see the ''Summary of Changes from Proposed Rule'' and ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act,'' and ''Unit Descriptions'' sections for more information.

We are aware of a CNDDB (Element Occurrence 10) report in the City of San Marcos that included a reference to the possible presence of hybrids between *Brodiaea filifolia* and *B. jolonensis.* This area was identified as subunit 8d (Upham) in our proposed rule. It has been reported that putative hybrid individuals of *B. filifolia* and another species that has been erroneously referred to *B. jolonensis* occur on the site (Armstrong 2005). Though these hybrid plants exhibit intermediate characteristics between the two theorized parental species, a third species, *B. orcuttii*, also grows nearby within the unit. According to Armstrong (2005), the hybrid plants appeared to be a ''clonal population'' restricted to ''a one acre area at the southwest end of the property'' and that these individuals ''probably reproduced asexually through cormlets.'' Although Armstrong (2005) found ''numerous *B. filifolia*, *B. orcuttii*, and (the material referred to as *B. jolonensis*)'' growing within the unit in May 2005, he failed to observe any of the hybrid plants. As a result, although putative hybridization has been reported for this unit, hybrid plants are either no longer present or they represent an undetectable, small fraction of the overall population of *B. filifolia.* The occurrence of *B. filifolia* in this subunit is estimated to support about 1,000 plants and contains features essential to the conservation of the species.

We were not able to confirm the commenter's reference to hybrids on Camp Pendleton.

(18) *Comment:* One peer reviewer considered the mapping of lands in Riverside County that were excluded from proposed critical habitat to be inadequate. One individual requested UTMs for these same areas.

Our Response: As stated in the proposed rule, maps of the areas in Riverside County containing features essential to the conservation of *Brodiaea filifolia* that were excluded under section 4(b)(2) of the Act, based on conservation measures outlined in the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), were available on our Web site. We believe that the general public finds these maps more useful than the UTM coordinates. Also, GIS layers of the areas proposed for critical habitat designation as well as areas excluded from proposed critical habitat are available upon request from our office. We will clarify the availability of this information in future critical habitat rules.

(19) *Comment:* One peer reviewer expressed the importance of designating critical habitat for *Brodiaea filifolia* in irregularly flooded bottomland areas of the San Jacinto River floodplain because of concerns that alteration of the floodplain could adversely modify a significant portion of the Riverside County occurrences of the plant and eliminate a unique element of the species' habitat associations (*i.e.*, plants adapted to alkali soils). The reviewer stated that designation of critical habitat in the San Jacinto River floodplain area would strengthen the regulatory effectiveness of section 7 by adding ''adverse modification'' to the jeopardy standard available to the Service and ensure that activities of the U.S. Army Corps of Engineers (ACOE) do not adversely modify the habitat. The reviewer also indicated that thousands of acres are undergoing alteration by sewage sludge and manure dumping.

Our Response: We agree that areas supporting *Brodiaea filifolia* in the San Jacinto River floodplain are important because they contain features essential to the conservation of the species. However, these areas have been excluded from critical habitat because the Western Riverside County MSHCP addresses the conservation needs of the species, including the maintenance of floodplain processes along the San Jacinto River. The Secretary has determined the benefits of excluding lands covered by the Western Riverside County MSHCP outweigh the benefits of including them in critical habitat (see the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' section of this rule.)

(20) *Comment:* Two peer reviewers and one individual commenter stated that areas we identified as having features essential to the conservation of *Brodiaea filifolia* near the City of Corona and in Moreno Valley in Riverside County are erroneous and based on an early draft of the Western Riverside County MSHCP. The commenter suggested they might be derived from questionable biological surveys.

Our Response: We appreciate the correction. After further evaluation, we did not find reliable data validating the occurrences of *Brodiaea filifolia* at these locations, and we removed them from consideration. For more information, please refer to the ''Summary of Changes from Proposed Rule.''

(21) *Comment:* One peer reviewer suggested that we designate habitat blocks that contain the entire San Jacinto River floodplain to capture the historical habitat of the species.

Our Response: When designating critical habitat for *Brodiaea filifolia* we identified land containing physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Physical or

biological features include areas needed for pollen dispersal and pollination; seed dispersal and germination, and maintenance of seed banks; and areas that provide the basic requirements for growth. These features, referred to as PCEs, are discussed in the ''Primary Constituent Elements'' section of this rule. Areas in western Riverside County, including lands within the San Jacinto River floodplain that are occupied by *B. filifolia* and contain features essential to the conservation of the species have been excluded from critical habitat pursuant to section 4(b)(2) of the Act (see ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act.'')

(22) *Comment:* One peer reviewer questioned how land management of reserves helps recovery of the species with and without critical habitat.

Our Response: We are assuming the peer reviewer is referring specifically to reserves that are established in conjunction with HCPs. Approved HCPs include measures to monitor, minimize, and mitigate impacts; and must provide adequate funding. Management of reserves in accordance with an HCP's issuance criteria would be carried our regardless of a critical habitat designation on identified reserve lands. Only actions authorized, funded, or carried out by a Federal agency that may affect critical habitat would require consultation with us and would not affect actions undertaken on reserve areas that do not have a Federal nexus. Reserves established as part of an HCP include monitoring and management to ensure the areas retain their biological value for the species.

Peer Review Comments Related to Department of Defense (DoD) Lands

(23) *Comment:* One peer reviewer requested a discussion of the importance of populations of *Brodiaea filifolia* on Camp Pendleton.

Our Response: Populations of *Brodiaea filifolia* on Camp Pendleton are of considerable importance not only because of the numbers of plants reported (over 4,000) from several different occurrences, but also because they are found in more than one vegetation or soil association, including grasslands and vernal pools; the occurrences are distributed in a manner that likely facilitates pollen transfer among them and also with occurrences to the north and south of Camp Pendleton. Please see the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information about Camp Pendleton's Integrated Natural Resource Management Plan (INRMP) and other measures Camp Pendleton is undertaking to address *B. filifolia* on their lands.

Peer Review Comments Related to the NCCP/HCP Program, Section 7, and Section 404

(24) *Comment:* Two peer reviewers and one commenter disagreed with our determination to exclude critical habitat based on approved HCPs. One peer reviewer expressed further concern that it is uncertain whether HCPs will protect these areas because no specific preserve boundaries have been proposed, relying instead on goals and potential conservation. The reviewers stated that we did not provide a clear biological reason for excluding lands covered by HCPs and questioned why more areas were not determined to be critical habitat.

Our Response: Under section 4(b)(2) of the Act, the Secretary may exclude any particular area from critical habitat designation if the benefits of excluding such area outweigh the benefits of including it in critical habitat, unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species. We evaluated the benefits of excluding critical habitat on lands covered by HCPs, including the Western Riverside County MSHCP, the San Diego County Multiple Habitat Conservation Plan (MHCP) and its approved subarea plans, the Orange County Central and Coastal NCCP/HCP, and the Settlement Agreement for Rancho Mission Viejo's Ranch Plan, a component of the draft Orange County Southern Subregion NCCP/HCP, against the benefits of including such lands in critical habitat. A major benefit of excluding these lands from critical habitat is the facilitation of continued partnerships with the various signatory agencies, cities and landowners involved with these NCCP/HCP efforts. Although a possible benefit of including these lands in critical habitat would be to enhance education about the species and its habitat needs, we consider this benefit to have largely been met through the public participation process that occurred, and continues to occur, during the development and implementation of these conservation planning efforts. We acknowledge that the Western Riverside County MSHCP does not describe a hard-lined reserve, but it does identify specific conservation goals and objectives for *Brodiaea filifolia,* including the conservation of 11 occurrences in the two Core Areas in western Riverside County where this species is found.

Please refer to the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' section for more discussion of the Western Riverside County MSHCP and other NCCP/HCP efforts.

(25) *Comment:* Two peer reviewers state that the Lakeview/Nuevo Area Plan (Dudek and Associates 2003) is inconsistent with provisions of the Western Riverside County MSHCP because it has nearly the entire Criteria Area zoned for residential development.

Our Response: Under the Western Riverside County MSHCP, permittees are obligated to adopt and maintain ordinances or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and fulfill the purposes of the MSHCP and its associated Implementing Agreement (IA) and Permit (Dudek and Associates 2003).

(26) *Comment:* Two peer reviewers requested that we discuss specific conservation actions under the Western Riverside County MSHCP that will result in conservation of *Brodiaea filifolia.* One reviewer specifically asked what assurances are in place that conservation benefits will occur before Highway 79 is built through habitat for the species.

Our Response: The Western Riverside County MSHCP identifies specific goals to be implemented for long-term conservation of *Brodiaea filifolia,* including conservation of at least 6,900 ac (2,760 ha) of habitat, containing 11 major locations supporting the species, conducting surveys for *B. filifolia* in certain areas, and maintaining floodplain processes along the San Jacinto River.

The assembly of the MSHCP Conservation Area is anticipated to occur over a period of time during the life of the Permit. To ensure that the resources ultimately conveyed to the MSHCP Conservation Area are maintained in their existing condition prior to reserve assembly, the MSHCP permittees are obligated to adopt and maintain ordinances or resolutions and to amend their general plans such that they will be able to meet their obligations under the MSHCP (Dudek and Associates, Inc. 2003; 2003b).

Several covered activities discussed under the MSHCP have the potential to impact populations of *Brodiaea filifolia* within the proposed MSHCP Conservation Area, including the San Jacinto River Flood Control Project and the State Route 79 Realignment Project.

These projects will require additional consultation with our agency under section 7 of the Act (Dudek and Associates, Inc. 2003).

As a result of informal consultation conducted to date on the State Route 79 Realignment Project, the City of Hemet has adopted an Interim Urgency Ordinance that preserves two avoidance alternatives for the State Route 79 Realignment Project, both of which are located outside of the MSHCP Criteria Area, and also allows the City to ensure that development efforts within the MSHCP Criteria Area are coordinated such that habitat conserved within the Criteria Area does not become fragmented, thereby allowing the City to meet their obligations under the MSHCP (City of Hemet 2005).

(27) *Comment:* One peer reviewer stated that there was no protection of land for *Brodiaea filifolia* before the approval of the Western Riverside County MSHCP, and there is no protection now, as evidenced by the ongoing dumping of sewage sludge and manure on occupied habitat. The reviewer cited an area along Case Road where dumping has occurred.

Our Response: Permittees under the Western Riverside County MSHCP are obligated to adopt and maintain ordinances or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the MSHCP and its associated IA and Permit (Dudek and Associates, Inc. 2003; 2003b). The Western Riverside County MSHCP is a large, complex habitat conservation plan, and its implementation is expected to take time. In its first year of implementation, the Western Riverside County MSHCP has already resulted in conservation and management actions that address threats to *Brodiaea filifolia* on private lands. For example, the City of Hemet has adopted an ordinance that has halted the dumping of manure within the City (City of Hemet 2002).

(28) *Comment:* One peer reviewer expressed concern that there is no assurance that prioritization of conservation areas following the criteria of the Western Riverside County MSHCP will select the more favorable biological areas over less favorable areas. For example, while the Western Riverside County MSHCP proposes one method of conservation, another, yet to be disclosed method, could prevail.

Our Response: We refer the reader to our responses to comments 24 and 26 above and to the section titled ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information.

(29) *Comment:* One peer reviewer, citing the Fieldstone/La Costa Associates HCP/Ongoing Multi-species Plan (known as the Villages of La Costa HCP), approved about 10 years ago, states that HCPs are supposed to provide for monitoring of the status of covered species to measure the success of conservation measures and asked us to document the status of the reserve.

Our Response: Conservation provisions for *Brodiaea filifolia* outlined in the Villages of La Costa HCP include protection of almost 6,000 plants in an open-space preserve with long-term management and monitoring, habitat restoration, and control of invasive plant species. Further information about this HCP can be found in the section titled ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act.''

Public Comments Related to Life History, Habitat Characteristics, and Ecological Considerations

(30) *Comment:* One commenter criticized our use of foraging distance data based on *Bombus* taxa (bumblebees), stating that their studies had not recorded a single instance of bumblebees visiting *Brodiaea filifolia* on their property.

Our Response: We believe our use of the 820 feet (ft) (250 meters (m)) distance for pollinator movement and habitat is justified. Bell and Rey (1991) noted *Bombus californicus* as one of the native bees observed pollinating *Brodiaea filifolia* on the Santa Rosa Plateau in Riverside County. Please see the ''Criteria Used to Identify Critical Habitat'' section for a detailed discussion.

(31) *Comment:* One commenter criticized our omission of a study of pollinators conducted by Rancho Mission Viejo.

Our Response: The omission of this report was inadvertent. The report summarizes field studies conducted in late spring 2003 and reports insects visiting flowers of *Brodiaea filifolia* at two locations and two times during the season. Observations were made on three dates between April and May 2003. Burrowing bees (Anthophoridae), Sweat bees (Halictidae), and Flower-loving flies (Syrphidae) were the most common groups of insects observed, although it is not clear from the report whether pollination by the various insects was confirmed by observations of fruit production by the plants. Information from this report is incorporated, where appropriate, in this final rule.

Public Comments Related to Critical Habitat, Primary Constituent Elements, and Methodology

(32) *Comment:* One commenter suggested a method for designing the size of conservation areas based on Burgman *et al.* (2001).

Our Response: Although the information is appreciated, it is important to clarify the differences between establishment of conservation areas and the designation of critical habitat. The designation of critical habitat does not establish reserves, preserves, wilderness areas, refuges or other types of conservation areas. We suggest readers refer to the sections on ''Methods,'' ''Primary Constituent Elements,'' and ''Effects of Critical Habitat Designation'' to more fully understand how we identified areas for critical habitat designation, the features essential to the conservation of the species, and the effect of critical habitat on landowners.

(33) *Comment:* One commenter wanted to know how many occurrences in Riverside and San Diego counties are outside designated critical habitat and how this would affect the viability of the species.

Our Response: A number of occurrences in Riverside and San Diego counties were not proposed for designation because they were not considered significant occurrences, or were excluded from proposed critical habitat under section 4(b)(2) of the Act. Many of these areas receive conservation consideration under existing INRMPs, HCPs, or other conservation instruments. Please refer to the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information. Please note that, although habitat for *Brodiaea filifolia* may be outside the boundaries of designated critical habitat, it does not mean these areas are unimportant or may not be necessary for recovery of the species.

(34) *Comment:* One commenter stated that the purpose of critical habitat under section 3 of the Act is to facilitate recovery of species and that it should include the opportunity for genetic exchange, migration, and changes in climate.

Our Response: The definition of critical habitat has two prongs, that is, one prong considers specific areas within the geographic area occupied by the species and the second prong considers specific areas outside the geographic area occupied by the species.

To the extent that we can relate genetic exchange, migration, and changes in climate to physical and biological features essential to the conservation of the species and those areas also require special management considerations or protection (prong one) or based upon a determination by the Secretary that an unoccupied area is essential to the conservation of the species (prong two), we may and do consider those factors in our designation of critical habitat. Please see the ''Designation of Critical Habitat Provides Little Additional Protection to Species'' section and the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information and discussion.

(35) *Comment:* One commenter stated there is a poor record of recovery for species with critical habitat while another commenter cited a report indicating that species with critical habitat are less likely to be in decline and twice as likely to be recovering.

Our Response: The Service has been unable to independently verify the results of such studies. The fact that there are conflicting studies shows that the issue has not been settled. The Service believes that most of the protections of the Act come with listing the species, and by far the most successful recovery efforts come from voluntary partnerships. Critical habitat designation is not the sole means by which conservation of a species may be addressed.

(36) *Comment:* One commenter characterized our proposed rule as a sweeping designation that exceeds our congressional mandate. The commenter further stated that our designation should be based on the estimated 825 ac (334 ha) of land occupied by *Brodiaea filifolia* identified in the final listing rule (63 FR 54975). Another commenter stated that Congress intended for critical habitat to be extremely narrowly defined and limited only to areas necessary to bring the species to a point where it is no longer in danger of extinction.

Our Response: In developing the final critical habitat designation for *B. filifolia,* we reviewed all information and data received during the two public comment periods and have removed from consideration those lands that do not meet the criteria for designation. Specific areas included in this final designation contain the physical or biological features essential to the conservation of *B. filifolia,* including space for pollen dispersal and pollination; seed dispersal and germination, and maintenance of seed banks; and areas that provide the basic requirements for growth. Please refer to the ''Summary of Changes From Proposed Rule,'' and ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' sections of this rule for more information.

(37) *Comment:* One commenter requested that we indicate which parcels within critical habitat units/subunits contain the PCEs. The commenter also stated that all lands within proposed units/subunits may not contain all of the PCEs.

Our Response: In re-evaluating areas proposed as critical habitat for *Brodiaea filifolia,* we determined that some areas do not contain features essential to the conservation of the plant, and therefore were removed from final designation. The ''Summary of Changes from Proposed Rule'' and ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' sections provide information about areas removed from final designation. Due to the scale at which we map critical habitat boundaries, we do not include parcel level detail. If lands within the boundaries of critical habitat units/subunits do not contain any PCEs, then they have been excluded from the designation in the text portion of the rule.

(38) *Comment:* One commenter stated that it was not good science to ''extrapolate'' genetic information from studies on a ''ubiquitous genera'' such as *Lasthenia* (lasthenia) to narrow endemic species such as *Brodiaea filifolia.*

Our Response: We cited the reference to *Lasthenia* to highlight the significance of outlying portions of a species' range to its genetic diversity. Ornduff (1966) cites several species of *Lasthenia* with morphological or cytological variants at the margins of their distributions. One example used was *Lasthenia fremontii,* restricted to vernal pools or wet meadows in the Central Valley. This example was cited for the purposes of explaining how peripheral populations of *Brodiaea filifolia* may be important to maintaining the genetic diversity of the taxa.

(39) *Comment:* Two commenters questioned our 820 ft (250 m) pollinator movement and habitat area. One commenter thought it was too narrow, the other thought it was too wide. One cited a reference that one group of bees (halictids) forage no more than 328 ft (100 m).

Our Response: We have included additional references and discussion in the ''Background'' section of this rule to support our use of 820 ft (250 m) for a pollinator movement and habitat area. Please see the ''Background'' and ''Criteria Used to Identify Critical Habitat'' sections for a detailed discussion.

Public Comments Related to Department of Defense Lands

(40) *Comment:* One Federal agency commenter agreed with our exclusion of mission-critical areas on Camp Pendleton from critical habitat designation under section 4(b)(2) of the Act; however, they strongly disagreed with our determination in the proposed rule that Camp Pendleton's Integrated Natural Resource Management Plan (INRMP) does not provide a benefit for *Brodiaea filifolia.* The commenter characterized critical habitat as encroachment that would unacceptably degrade Camp Pendleton's mission. The commenter also provided information about programs and activities carried out under the INRMP for *B. filifolia.*

Our Response: We appreciate the information from the commenter and have reviewed Camp Pendleton's INRMP, completed in November 2001 (U.S. Marine Corps 2001). Based on our review of the INRMP and information provided by the commenter, we determined that the INRMP provides a benefit for *Brodiaea filifolia* and have exempted Camp Pendleton from critical habitat designation pursuant to section 4(a)(3) of the Act. We have also determined that exclusion of Camp Pendleton pursuant to section 4(b)(2) of the Act is also appropriate. Please see the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' section for more information.

(41) *Comment:* One commenter claimed we are inconsistent in excluding Camp Pendleton from critical habitat designation while other military installations have critical habitat on their lands.

Our Response: The commenter did not cite which military installation(s) had critical habitat designation(s); therefore, we cannot provide specific information about a particular installation. Under section 4(b)(2) of the Act, the Secretary shall designate critical habitat, and revise critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying a particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if the benefits of such exclusion outweigh the benefits

of specifying such area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. These determinations are made by the Secretary on a species-by-species and area-by-area basis.

Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended the Act by adding a new section 4(a)(3)(B). This provision prohibits designation of critical habitat on any lands or other geographical areas owned or controlled by the Department of Defense (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 determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

The provisions of section 3(5)(A), 4(a)(3), and 4(b)(2) of the Act are fully considered by us when designating critical habitat. In some cases, critical habitat may have been designated on lands owned or controlled by the DOD prior to the 2004 amendments to the Act, or if otherwise determined to be appropriate. Please see the section ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information. Any revisions to designated critical habitat could be considered through the formal rulemaking process, subject to funding availability.

Public Comments Related to NCCP/HCP Program, Section 7, and Section 404

(42) *Comment:* One commenter stated that the Ranch Plan, a component of the draft Orange County Southern Subregion NCCP/HCP is designed to maximize gene flow for Brodiaea filifolia and that implementation of the Ranch Plan would not significantly reduce genetic exchange because of preexisting isolation. The commenter requested their property be excluded from critical habitat designation for B. filifolia because of the protections afforded the species under the draft NCCP/HCP.

Our Response: In general, it is our policy to consider excluding from critical habitat designation HCPs that are approved or are very close to completion as indicated by the fact that an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) has already been prepared and released for public review and comment. We have not yet released a draft EIS/EIR for the Orange County Southern Subregion NCCP/HCP for public review and comment; however, we are excluding from final critical habitat designation the portion of lands within the boundary of the draft NCCP/HCP that are owned by Rancho Mission Viejo and identified in the Ranch Plan under section 4(b)(2) of the Act, based on a recent Settlement Agreement. Please refer to the section ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information.

(43) *Comment:* One commenter stated that the City of San Marcos does not have an approved HCP and is not likely to have one in the near future that would warrant exclusion of their lands from critical habitat under section 4(b)(2) of the Act.

Our Response: We did not exclude any lands within the City of San Marcos under section 4(b)(2) of the Act; however, some lands in the City of San Marcos were removed from further consideration as critical habitat. Please refer to the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more information.

(44) *Comment:* Three commenters supported our practice of excluding critical habitat on areas covered by HCPs. One also suggested that we exclude areas covered under proposed HCPs, noting that failure to do so would remove incentives for them to participate in these planning efforts. This commenter also stated that exemptions from critical habitat should automatically follow approval of an HCP. Another commenter further stated that designating critical habitat in areas covered by an HCP would impose economic burdens, invite legal challenges, and be a disincentive to developing HCPs.

Our Response: It is our policy to exclude from critical habitat lands containing features essential to the conservation of a federally listed species that are covered by approved HCPs. Pursuant to section 4(b)(2) of the Act, critical habitat is to be designated or revised based on the best scientific data available and after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if the benefits of excluding such area outweigh the benefits of including it in critical habitat, unless such exclusion will result in the extinction of the species. As part of the process of balancing the benefits of including or excluding any particular area as critical habitat, including lands covered by approved HCPs and/or NCCP/HCPs, many factors are considered, including the issues identified by the commenters.

We make a determination to exclude lands within the boundaries of draft HCPs on a case-by-case basis. Generally, we exclude critical habitat from lands within the boundaries of draft HCPs or NCCP/HCPs if we can point to significant progress in the development of a draft HCP and/or NCCP/HCP, including the release of an EIR/EIS for public review and comment or development of some other identified conservation commitment, and we are confident the planning effort will lead to a successful outcome. With regard to automatic exemptions following approval of HCPs or NCCP/HCPs, section 4(b)(5)(A) of the Act requires that any proposed regulation, including revisions to critical habitat, be published in the **Federal Register** and that the public be afforded an opportunity to review and comment. Revisions to critical habitat designations without providing notice to the public would violate the Act. Please refer to the section ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for more discussion of this topic.

(45) *Comment:* Two commenters supported the designation of critical habitat in areas with HCPs, one noting that local agencies would welcome assistance from the Service and the other stating that critical habitat would ensure that an HCP would meet its success criteria.

Our Response: Both HCPs and critical habitat designations are designed to provide conservation measures to protect species and their habitats. The advantage of seeking new conservation partnerships (through HCPs or other means) is that they can offer active management and other conservation measures for the habitat on a full-time and predictable basis. Critical habitat requires Federal agencies that authorize, fund or carry out activities that may affect critical habitat to consult with us to ensure such actions do not destroy or adversely modify designated critical habitat. In some cases, the designation of critical habitat may remove incentives to participate in the HCP process because of added regulatory uncertainty; increased costs to plan development and implementation; weakened stakeholder support; delayed approval and development of an HCP; and greater vulnerability to legal challenge or other concerns. In some instances, we have received direct statements from landowners expressing their intent to withdraw from other types of cooperative efforts beneficial to

the conservation of listed species if their property was proposed for inclusion in critical habitat. We work with HCP applicants to ensure that their plans meet the issuance criteria and that the designation of critical habitat on lands where an HCP is in development does not delay the approval and implementation of the HCP. Additionally, HCPs include conservation actions for covered species whether or not the area is designated as critical habitat.

(46) *Comment:* One commenter wanted to know how we determined that the benefits of excluding HCP areas from critical habitat outweigh the benefits of their inclusion.

Our Response: We refer the reader to the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' section for an explanation of how we have weighed the benefits of including or excluding critical habitat for Brodiaea filifolia on lands covered by HCPs.

Comments Related to Economic Analysis; and Other Relevant Impacts

(47) *Comment:* Two commenters criticized our failure to include the economic analysis with the critical habitat proposal and one of these commenters also noted the lack of an EIS and National Environmental Policy Act (NEPA) analysis.

Our Response: We published our proposed designation of critical habitat for *Brodiaea filifolia* in the **Federal Register** on December 8, 2004 (69 FR 71284). At that time, our Division of Economics and their consultants initiated preparation of a draft economic analysis of the proposed designation. The draft economic analysis was released for public review and comment on October 6, 2005 (70 FR 58361), and we accepted comments on both the draft economic analysis and proposed rule until October 20, 2005. With regard to the preparation of an EIS and NEPA analysis, 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. Please see the ''National Environmental Policy Act'' section of this rule for additional information.

(48) *Comment:* One public commenter stated that we failed to assess the impact of multiple critical habitat designations on landowners.

Our Response: To comply with the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285) to include all co-extensive effects, the economic analysis considers the potential economic impacts of efforts to protect the *Brodiaea filifolia* and its habitat in critical habitat. It does so by taking into account the cost of conservation related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed boundaries. Our economic analysis fully evaluated the economic and other impacts of designating critical habitat pursuant to section 4(b)(2) of the Act. The economic and other impacts of critical habitat are individually analyzed in our economic analysis report, which parallels our review of a Federal action under section 7(a)(2) of the Act. Our analysis of the effects of a Federal action under section 7(a)(2) of the Act would consider the effects to any designated critical habitat. In the proposed and final rules, we describe and evaluate potential activities that may adversely modify critical habitat or may be affected by such designation pursuant to section 4(b)(8) of the Act. Each critical habitat designation may be affected differently by a proposed action in a manner that reflects the specific physical and biological features that are considered essential for the listed species. Thus, our economic analysis would reflect the economic and other impacts specific to each designation.

(49) *Comment:* One commenter states that the draft economic analysis (DEA) is inconsistent with previous economic analyses for *Atriplex coronata* var. *notatior* and *Navarretia fossalis*, which provided little economic analysis of the loss of potentially developable acreage and instead emphasized administrative costs and impacts to public works projects. The commenter further states that the Service should develop consistent procedures for preparing economic analyses so that results between species are comparable, especially for areas such as the San Jacinto River, where occupied habitat for all three of these species overlap.

Our Response: Every economic analysis of proposed critical habitat rulemakings is undertaken following the same framework, described in pages 1–1 through 1–11 of the DEA. The reports focus on the economic activities identified in the proposed rule as likely to threaten the habitat and resulting in the greatest impacts. These activities, and the associated measures required to minimize impacts, will vary depending on the attributes of the habitat and the specific species. Urban development is identified in the proposed rule as a threat to *Brodiaea filifolia* throughout much of the proposed critical habitat. As discussed in paragraphs 91 to 95 of the DEA, off-setting compensation for impacts to *B. filifolia* in essential habitat areas is based upon mitigation requirements for the plant contained within HCPs prepared pursuant to the NCCP Act of 2001 in California. These plans primarily require avoidance or call for conservation of the occurrences encompassed within the essential habitat areas identified in the proposed rule. This is in contrast to potential mitigation for *Atriplex coronata* var. *notatior* and *Navarretia fossalis*, for which developers are able to mitigate off-site and continue with planned projects.

(50) *Comment:* One commenter states that the DEA fails to address the greatest capital expenditure in western Riverside County, because it does not include the costs required to purchase and maintain reserves for the species. The comment further states that costs of restoring current habitat that could be lost to land-altering activities on private lands should also be included.

Our Response: The Western Riverside County MSHCP is a comprehensive, multi-jurisdiction HCP for conservation of species and their habitats in Western Riverside County. Under the Plan, we will grant take authorization under Section 10(a)(1)(B) of the Act for otherwise lawful activities such as private development that may incidentally take or harm listed wildlife species in exchange for assembly and management of an MSHCP Conservation Area. The MSHCP Conservation Area will be formed through a variety of methods, including inclusion of existing conservation banks and/or mitigation areas, establishment of new conservation banks and/or mitigation areas, incentives provided to private landowners to voluntarily convey their property for conservation, purchase of lands through the Local Development Mitigation Fee paid by project applicants seeking coverage, or direct purchase of land by the project proponent as an in-lieu payment. As stated in paragraph 94, based in part on the requirements of the MSHCP, the analysis assumes that 95 percent of *Brodiaea filifolia* habitat in areas susceptible to development activity are preserved. The costs of preserving these areas, along with the costs of relocating the plant, salvaging bulbs, and maintaining and monitoring populations for the remaining five percent of affected development, is captured in the analysis.

(51) *Comment:* One commenter questions the use of the IMPLAN model, given the DEA's caveat that the model overstates the long-term impacts of regulatory change.

Our Response: Input-output models are discussed as an example of one tool commonly used by economists to estimate regional impacts. However, this particular tool is not used in this analysis. Instead, the DEA relies on a partial equilibrium model to estimate regional effects.

(52) *Comment:* One commenter states that Exhibit ES–2 in the DEA should provide administrative costs as a separate line item.

Our Response: Exhibit ES–2 provides information to the reader concerning key impacts of the designation, including activities that may be most impacted by *Brodiaea filifolia* conservation efforts. Administrative costs are included in the cost estimates for each activity presented, rather than reported separately, because they represent only 2 percent of upper-bound total costs estimated for proposed critical habitat. In present value terms assuming a 7-percent discount rate, these administrative costs are approximately $272,000; assuming a 3-percent discount rate, administrative costs total $298,000.

(53) *Comment:* Several commenters question the DEA's inclusion of units/subunits 1b, 2, 4d, 4e, 8b, 8e, 10, EH–1, EH–2, EH–3, and EH–7 (as listed in the DEA) in the development analysis. The comments state that development-related impacts in these units are unlikely, because either these units have already been developed or they are permanently preserved open space.

Our Response: The DEA utilized the best available information locating developable land within areas containing features essential to the conservation of *Brodiaea filifolia*. This information includes a geographic information systems (GIS) layer from the San Diego Association of Governments (SANDAG) locating developable land within essential habitat units in San Diego County, and a GIS layer from the Southern California Association of Governments (SCAG) locating vacant land within essential habitat units in Los Angeles, San Bernardino, Orange, and Riverside Counties. Because the SANDAG and SCAG data are updated only every few years, it is possible that information for certain parcels is no longer current. Accordingly, the Service appreciates the new information provided during the public comment period that allows for a refinement of the DEA. Based on this information, the calculation of development impacts was revised to remove all of the units listed above, with the exception of subunit 1b. Subsequent research has shown that the subunit is privately owned, not developed, and the plants are not currently located in a preserve. Note that all of the above referenced areas, except subunit 1b, have been removed or excluded from the final designation.

(54) *Comment:* One commenter states that the methodology should be refined so that the bias of overstatement in the analysis can be eliminated.

Our Response: The potential impacts of *Brodiaea filifolia* conservation activities on development within essential habitat are a function of the distribution of the plant within the unit, the ability of the developer or landowner to modify projects to avoid each locality, and the existence of alternative uses of the property that do not threaten the plant, all of which are unknown. The DEA uses the best available information to quantify potential impacts in light of the uncertainty associated with these factors.

(55) *Comment:* Two commenters state that there should be no additional costs associated with designating critical habitat in areas covered by approved HCPs. In particular, one comment states that many of the Federal Information Processing Standard (FIPS) places discussed in Exhibit 3–11 are included within approved HCPs and should be deleted from the analysis.

Our Response: We recognize that many of the FIPS listed in Exhibit 3–11 are located within approved or pending HCP jurisdictions and that these plans may require protection of *Brodiaea filifolia* habitat. However, as stated in the DEA, costs incurred due to conservation activities and other protective measures carried out by other Federal agencies, State and local governments, and other parties are considered co-extensive with the protection offered by critical habitat. Inclusion of co-extensive impacts in the economic analysis complies with direction from the U.S. Tenth Circuit Court of Appeals.

(56) *Comment:* One commenter states that the DEA should estimate costs associated with the potential loss of redevelopment increment funds in the City of San Marcos, because a majority of land in the proposed critical habitat within the City occurs in an adopted Redevelopment Project Area.

Our Response: Based on recent conversations with the City of San Marcos, we agree that redevelopment increment funds may be impacted if property construction is reduced in areas where funds would have been collected by San Diego County and allocated to the City. However, the city representatives were not able to provide information about the potential magnitude of the impact.

(57) *Comment:* One commenter states that the DEA should factor in costs of the proposed designation to infrastructure assessment districts in the City of San Marcos.

Our Response: We agree that impacts associated with reduced or delayed development in infrastructure assessment districts within the City of San Marcos are a possibility. Infrastructure assessment districts include Community Facilities Districts or Special Assessment Districts that levy additional taxes on properties within the district to finance the construction of public facilities. The additional tax for each included property may be based on a variety of factors such as lot size and benefit received by the property. Therefore, *Brodiaea filifolia* conservation activities may reduce taxes received by a particular district where new property construction that would occur absent the designation does not occur. However, an estimate of the degree of this reduction would require information on the type and value of future development at a parcel-specific level. This information is currently unknown.

Because the tax is used by the City to make payments on bonds issued to finance construction of public facilities, *Brodiaea filifolia* conservation activities may also impact the City, developers, and bondholders where development projects associated with special assessments are halted after bond issuance, leading to property indebtedness in which the developer is unable to finance its portion of the project and/or the City is unable to make payments to bondholders. The potential for B. filifolia conservation activities to render the developer and/or the City unable to meet its financial obligations is a function of currently unknown variables such as the location of B. filifolia on the project site, project specifications, and the financial status of the developer and/or the City.

(58) *Comment:* One commenter states that the development analysis is inaccurate, because it uses residential land values even though a number of the proposed critical habitat units in the City of San Marcos are zoned for non-residential uses. Specifically, the commenter states that the DEA does not factor in values of parcels that are zoned for industrial use in subunits 8c, 8d, and 8e. It also questions the appropriateness of the impact scenarios based on ''supply of housing'' and ''home prices'' in these areas. Another comment states that the per-acre land values estimated in the DEA and presented in Exhibit 3–7 appear low.

Our Response: The first scenario analyzed in the DEA captures potential losses to owners of developable parcels zoned for non-residential uses. This scenario assumes that in areas that must be avoided, or set-aside, from future development, the market value of those acres is lost. The market value of raw land implicitly incorporates all potential future uses of the property, be it residential, commercial, industrial, or otherwise. Thus, the loss in land value captures the lost value of future use of the property. The sample of property values used in this analysis includes a mix of properties zoned for residential and non-residential uses and therefore is reasonably representative of losses on average.

Market values used in the DEA are drawn from a data set of raw land values obtained from the San Diego County assessor for parcels located within areas containing features essential to the conservation of *Brodiaea filifolia*. Based on conversations with the assessor, to ensure that assessed values of raw land were consistent with market values, the DEA uses a sample from this dataset including only parcels sold and assessed in 2004. This sample includes parcels zoned for industrial use in subunit 8d. Considering public comment, an adjustment is made to the final analysis. In the DEA, the per-acre land value was calculated as a weighted average across the sample of parcels. This approach may understate per-acre values due to the presence of several parcels of relatively low value and high acreage in the sample. The economic analysis was revised, calculating a per-acre value based on the average of the per-acre values implied by each parcel, and by eliminating an outlying parcel from the sample. This revision results in a per-acre average land value for parcels in San Diego County of $69,000.

We note that the second scenario estimated in the DEA (paragraphs 100 through 109), which measures consumer welfare losses associated with higher home prices, does not consider the impact of shifts in prices of commercial or industrial facilities. Analysis under the second scenario relies on an existing economic model estimating the shift in quantity of housing supplied as a result of critical habitat. No such model exists for non-residential development, therefore we are unable to estimate welfare losses in markets for commercial or industrial properties at this time.

(59) *Comment:* One commenter states that the DEA contains a misreading of the San Diego County MHCP standards as summarized in Exhibit 3–6. According to the comment, inclusion in a soft-line area by and of itself does not dictate the high conservation standards of 95 percent provided in Exhibit 3–6 unless that population is also deemed to be critical by the MHCP. The comment notes that *Brodiaea filifolia* occurrences in the City of Carlsbad are located in a Major Amendment Area and not in a soft- or hard-line area. Another comment states that the DEA overlooks the relative importance of each of the *B. filifolia* localities and how this could affect compensation within conservation plans for the species.

Our Response: Information on conservation measures for *Brodiaea filifolia* contained in the MHCP relies on personal communication with the County, as noted in Exhibit 3–6. The sample of conservation requirements reviewed in this exhibit represent the best available information regarding uncertain future conservation requirements in areas, both within these plans and outside the boundaries. As discussed in paragraph 94, the analysis assumes that the highest level of conservation for *B. filifolia* provided across the approved plans will apply to future development projects. Given the uncertainty regarding the location of plants, the significance of particular populations, and the configuration of specific development projects, this assumption may overstate impacts for specific projects.

(60) *Comment:* One commenter questions the disparity between costs for particular units. The commenter states that subunit 8d is in the center of the City of San Marcos while the Miller Mountain unit (subunit 5a) is on private and Forest Service land within the San Mateo Wilderness. For this reason, the commenter questions why the estimated costs for subunit 8d are low, relative to the estimated costs for the Miller Mountain property.

Our Response: The relative costs to development activities assigned to each unit are a function of the land value losses calculated in the first scenario and the impacts to the housing market calculated in the second scenario. In the first scenario, costs are driven by the quantity of private, developable land within the unit that is projected to be developed in the next 20 years. As shown in Exhibit 3–8, proposed subunit 8d contains 18.64 acres of projected development on private, developable acres while subunit 5a contains 21.36 acres; therefore, impacts under this scenario are greater for subunit 5a.

In the second scenario, impact estimates are driven by the overall amount of new housing anticipated in the FIPS place closest to the unit and median home values in that FIPS place (FIPS places generally follow the legal boundaries of incorporated cities). The DEA assigned subunit 5a to the closest FIPS place, San Clemente and subunit 8d to San Marcos. The disparity in impacts estimated in this scenario results from difference in the median home price and projected number of future houses in the two cities. However, based on public comment and further reflection, a new assumption is applied to this scenario.

Some areas of essential habitat, such as subunit 5a, fall outside the boundaries of the 10 FIPS places included in the DEA. Several of these units fall within 3 miles of the nearest FIPS place and thus are assigned to that place. Five remaining units, including subunit 5a, are 10 or more miles from the nearest FIPS place. Zabel and Paterson's model, described in paragraph 101 and used to estimate market impacts, represents the best available tool for estimating impacts to the housing market resulting from critical habitat designation. However, this tool is not capable of assigning costs to these five units. Considering their more remote nature, as demonstrated by their distance from densely populated areas, designation is less likely to result in substantial impacts relevant to the housing market. Because the potential magnitude of market effects is unknown for these five areas, no consumer welfare losses are reported for these areas in the final economic analysis.

(61) *Comment:* One commenter states that the development analysis should evaluate a scenario of higher density development along with the benefits of adjacent open space conservation.

Our Response: The DEA analyzes two scenarios, as described in paragraphs 80 through 109. The first scenario assumes that no future housing stock is lost due to *Brodiaea filifolia* conservation activities, because substitute sites are available. The second scenario assumes that some future housing stock is lost (e.g., not constructed at other sites). Adding a third scenario of higher density development, as suggested by the comment, would result in an impact estimate similar to the estimate in the first scenario, and no larger than estimated in the second. Higher density development represents a substitution option similar to the availability of non-critical habitat developable land. It assumes that the same number of homes are built, but simply on a smaller footprint. In addition, such a scenario might require the assumption that existing zoning-related restrictions will be lifted to accommodate the higher density development. We have no

information to suggest such a change in existing regulation will occur.

If higher density development results from *Brodiaea filifolia* conservation activities, additional open space may be preserved. Various studies document the positive effect of environmental amenities, including open space, on the value of nearby residential and commercial properties (e.g., Thibodeau and Ostro (1981), Nelson (1985), Lacy (1990), Garrod and Willis (1992), Bockstael (1996), Geoghegan (1998), Acharya and Bennet (2001)). The enhancement of real estate values depends on, among other things, the proximity of homes to open space and the spatial extent of the effect (only the homes immediately adjacent to the space are affected, the entire neighborhood is affected, or the entire town or region is affected), whether the effect decreases with distance from the open space and at what rate, whether the community already contains a significant supply of conserved land, and the relationship between local development pressure and values for conserved open space (e.g., if open space is scarce, and development pressure high, the combination could affect the magnitude of the benefit).

To make a defensible transfer of ''open space value'' as identified in the literature to a community or neighborhood impacted by *Brodiaea filifolia* conservation activities, additional data are required. For example, information on the extent of existing open space in the affected communities and the additional amount likely to be conserved as a result of *B. filifolia* conservation activities must be compared to similar statistics for the communities assessed in the economics literature. In addition, the transfer requires an assessment of the similarities in the quality and attributes of the land to be conserved with the qualities and attributes of the land studied in the literature. The models and data required to complete this transfer are not readily available for *B. filifolia* habitat. As a result, the DEA is unable to estimate the potential benefits of open space conservation.

(62) *Comment:* One commenter questions the cost allocation across units in Exhibit 3–3. The comment states that, given that the preceding exhibit (Exhibit 3–2) contains only four subunits that have had a formal or informal consultation, it is questionable as to why the rest of the subunits are included if they have never been consulted on.

Our Response: Exhibit 3–3 does not include units where no consultation has taken place. Exhibit 3–2 presents a summary of consultations for development projects that occurred in areas containing features essential to the conservation of the species in the proposed rule, but it does not reflect consultations or project modifications that have occurred for HCPs. Exhibit 3–3, on the other hand, presents the past costs of these development consultations (administrative and project modification costs) in addition to administrative costs of the development of HCPs that have jurisdiction over essential habitat areas. Footnote 45 notes that these HCPs are the County of San Diego Subarea Plan under the Multiple Species Conservation Program (MSCP) in March 1998, the Western Riverside County MSHCP in June 2004, and the City of Carlsbad's Habitat Management Plan (HMP) under the MHCP in November 2004. As stated in the note (a) to Exhibit 3.3, the analysis distributes the HCP costs evenly across the units covered by the plans.

(63) *Comment:* One commenter asks whether costs in Exhibit 3–2 are attributed solely to *Brodiaea filifolia* or whether other listed species benefited from the consultations and mitigation activities.

Our Response: Exhibit 3–2 summarizes four consultations for development projects that have occurred in areas containing features essential to the conservation of *Brodiaea filifolia* in the proposed rule. These consultations covered other species in addition to *B. filifolia.* The consultations covering subunits 6c and 8b also considered the coastal California gnatcatcher, as noted in Exhibit 3–2. The consultations covering subunit 7a note that other federally threatened and State species of special concern occur onsite, such as the coastal California gnatcatcher, northern harrier, Cooper's hawk, white-tailed kite, and California adolphia; however, the consultations were primarily focused on impacts to *B. filifolia.* For all of the consultations, project modification costs described in the table were driven by efforts to protect *B. filifolia* and, therefore, are attributed to this species.

(64) *Comment:* One commenter states that, typically, the developer will pass any increase in project cost to the ultimate consumer of the development (homeowner, business owner, building owner), not to the raw landowner. It is the experience of the commenter that developers simply recognize the cost of building constraints, work with them and build them into the ultimate cost of the product.

Our Response: The assumption referred to in this comment is derived from the first development scenario analyzed in paragraphs 84 and 87 through 99 of the DEA. This scenario assumes that within regional housing markets, substitute land exists for development that would otherwise occur within essential habitat. Projected development shifts to less preferred sites (e.g., areas that were previously farther out in time on the development horizon or that were not anticipated to be developed within the next 20 years). This assumption may be reasonable for the proposed designation, because the potentially affected acres represent a small percentage of the total developable land in the municipalities where they are located. Accordingly, existing landowners whose land would otherwise be higher in the hierarchy of potentially developable sites must accept lower prices associated with *Brodiaea filifolia* conservation activities if development is to occur. This assumption is consistent with peer review by three economists of previous economic analyses of proposed critical habitat in California. Note that the second development scenario (described in paragraphs 100 through 109) makes the alternative assumption that land is scarce. Under this scenario, homebuyers experience costs associated with *B. filifolia* conservation activities.

(65) *Comment:* One commenter states that Exhibit 5–3 is flawed because not every unit contains a transportation issue. The commenter requests that a more realistic transportation scenario be evaluated based on specific subunits. Another commenter states that the transportation impacts analysis is incomplete, because the Service did not contact the Riverside County Transportation Commission or the local cities to identify transportation projects in areas containing features essential to the conservation of *Brodiaea filifolia.*

Our Response: We acknowledge that simplifying assumptions were made in the DEA to bound the potential magnitude of transportation-related impacts. During development of the DEA, the relevant district offices of California Department of Transportation (CALTRANS), which has responsibility for transportation-related projects in California, were contacted (see paragraphs 126 through 130). CALTRANS represents the best publicly available source of State transportation projects. The offices were unable to provide site-specific information about the potential location of future *Brodiaea filifolia* conservation activities. Therefore, the DEA used a historical rate of consultation, plus information about the project modifications associated with those consultations, to predict

future transportation costs. These impacts were assumed to be equally likely to occur in any unit (excluding lands on Camp Pendleton), resulting in an even distribution of costs shown in Exhibit 5–3. Note that, based on new information received during the public comment period, transportation-related impacts are removed from units where *B. filifolia* is not present, the land is already preserved, the land is already developed, or a plan is already in place to move the plants to another location. These units include units/subunits described in the DEA as 2, 4a, 4d, 4e, 8b, 8e, 10, EH–1, EH–2, EH–3, and EH–7.

Based on this comment, the Riverside County Transportation Commission was contacted, and information about potential impacts associated with the Highway 79 re-alignment project and the Mid-County Parkway was requested. At this time, due to the sensitive nature of the projects and their early stages, a representative of the commission was unable to provide specific information about whether habitat for *Brodiaea filifolia* would be impacted. However, he noted that if *B. filifolia* habitat is identified, project modifications would likely be similar to conservation requirements found in the Western Riverside County MSHCP. In areas containing features essential to the conservation of the plant, information from cities about potential transportation-related impacts is not readily available at this time.

(66) *Comment:* One commenter states that the DEA ignores the costs associated with designing, refining, and negotiating a preferred alternative to avoid *Brodiaea filifolia* in the Foothill-South Corridor. The commenter also states that the DEA ignores mitigation measures specially designed to address potential *B. filifolia* impacts, such as focused plant surveys, seed collection and salvage measures, soils collection and translocation, and translocation monitoring. Finally the commenter states that the DEA also ignores delay costs.

Our Response: As discussed in paragraphs 123 through 125, the DEA considered impacts to the Foothill-South project. At that time, the best information available suggested that the preferred alternative would completely avoid *Brodiaea filifolia* habitat. However, new information has since been provided by the Transportation Corridor Agencies (TCA), the organization responsible for this project. Specifically, TCA stated that three populations will be affected by the project and provided information about past costs, future mitigation costs, and potential delay costs. These costs were incorporated in the final economic analysis. The three units where *B. filifolia* populations are anticipated to be affected by the Foothills-South project are subunits 4c, 4f, and 4h. All three of these units are excluded from the final designation.

(67) *Comment:* One commenter states that Exhibit 5–4 of the DEA may be flawed, because not every unit contains a utility corridor. The commenter requests that a more comprehensive subunit evaluation of potential impacts to utility projects be conducted.

Our Response: We acknowledge that simplifying assumptions are made in Section 5.2 in order to bound the analysis of impacts to utility activities. A rapid assessment of transmission lines and distribution systems operated by San Diego Gas and Electric was conducted in order to extrapolate potential impacts across San Diego and Orange counties. Therefore, actual future costs to utility activities may be higher or lower in certain units presented in Exhibit 5–4. However, the costs presented in the final economic analysis represent the best available information at this time. Also note that, based on new information received during the public comment period, utility-related impacts are removed from units where *Brodiaea filifolia* is not present, the land is already preserved, the land is already developed, or a plan is already in place to move the plants to another location. These units include 2, 4a, 4d, 4e, 8b, 8e, 10, EH–1, EH–2, EH–3, and EH–7.

(68) *Comment:* One commenter states that the DEA should consider the proposed Special Area Management Plan (SAMP) for the San Jacinto watershed and potential economic impacts of the critical habitat designation within the watershed.

Our Response: The ACOE is currently conducting a comprehensive aquatic resource plan, called a SAMP, for the San Jacinto watershed. The purpose of the SAMP is to establish a watershed-wide aquatic resource reserve program, and to minimize individual and cumulative impacts of future projects in this watershed. The SAMP will result in the issuance of programmatic and individual permits issued under section 404 of the Clean Water Act. Because the sensitive areas identified by the SAMP are likely to overlap critical habitat, the SAMP will not provide significant new information about the sensitivity of these acres. In addition, because the DEA assumes that 95 percent of habitat for *Brodiaea filifolia* that is likely to be developed in the next 20 years will be avoided (see paragraph 94), it is unlikely that more burdensome actions will be required by the ACOE as a result of the SAMP. Therefore, the cost estimates calculated in the DEA are unlikely to be affected by the SAMP.

(69) *Comment:* One commenter states that the DEA should offer some cost estimates of the proposed flood control project discussed at paragraph 139.

Our Response: Section 5.3 of the DEA considers impacts to flood control activities in areas containing habitat for *Brodiaea filifolia* proposed for critical habitat designation. The best available data were utilized at the time to estimate these potential impacts. While we agree that *B. filifolia*-related conservation costs are likely, no additional information has become available since the drafting of the DEA that would allow us to quantify or monetize these impacts. The units potentially affected, EH5, EH6, and EH7, are excluded from the final designation.

(70) *Comment:* One commenter offered the following clarification to page 2–17, section 2.5, paragraph 71: ''It is incorrect to assume that CEQA requires a lead agency to 'presume that a project will result in a potentially adverse environmental impact and to prepare an EIR* * *.' Rather, CEQA requires that a project's impacts be disclosed, and those disclosed impacts mitigated to a point beneath a level of significance. If the project is unable to do so, then an EIR is required when determined by the lead agency. A predisposition towards EIR preparation regardless of threshold determination is counter to CEQA precedence.''

Our Response: We have incorporated this clarification into the final economic analysis.

(71) *Comment:* One commenter offered the following clarification to page 2–17, section 2.5, paragraph 73: ''Please note that the Service is an integral participant in the NCCP process. Witness that all letters to participating municipalities are signed by both the CDFG and the Service.''

Our Response: We appreciate the clarification and have incorporated it into the final economic analysis.

(72) *Comment:* One commenter noted that Exhibit 6–2 appears to project costs to conservancies from 2006–2024, but it is not clearly stated in the table or text.

Our Response: We have clarified this in the final economic analysis.

Summary of Changes From Proposed Rule

In developing the final critical habitat designation for *Brodiaea filifolia*, we reviewed peer and public comments received on our proposed rule and draft economic analysis; conducted further

evaluation of lands included in our proposal; and refined our mapping boundaries. This final rule reflects refinements of our mapping process, and removal of areas from critical habitat designation under section 3(5)(A), exemption under section 4(a)(3), and exclusions under section 4(b)(2) of the Act.

We refined our mapping to better delineate habitat containing features essential to the conservation of the species. For example, we found that there were areas within the boundaries of proposed critical habitat that did not contain the physical or biological features essential to the conservation of *Brodiaea filifolia* such as roads and buildings. In most cases developed areas were captured in the proposed critical habitat boundaries because we used a 328 ft (110 m) minimum grid cell size. When preparing this final designation, we identified areas where the majority of a grid cell included developed areas, then removed these particular cells from the boundaries of critical habitat. These refinements reduced the amount of land in subunit 6d (Taylor/Darwin) and subunit 8d (Upham) (Table 1) that contain features essential to the conservation of the species.

Along with refining our mapping, we re-evaluated the occurrences of *Brodiaea filifolia* included in proposed critical habitat. Criteria used to determine if an occurrence is significant included: occupied habitat supporting a minimum of 850 naturally occurring individuals of *B. filifolia* and/or populations associated with unique habitats (e.g. soils, vegetation, or elevation) or peripheral populations important for protecting genetic variability across the species' range.

Based on our review and re-evaluation, a total of 12 units/subunits were removed from consideration because we determined they were not significant occurrences (see ''Criteria Used to Identify Critical Habitat'').

Units/subunits removed from consideration because we determined they did not support significant occurrences of *Brodiaea filifolia* include: Unit 3 (Aliso Canyon), 4a (Arroyo Trabuco), 4d (Prima Deschecha), 4e (Forster Ranch), 4f (Talega/Segunda Deschecha), 4h (Christianitos Canyon South), 4i (Blind Canyon), 6a (Alta Creek), 6c (Oceanside/Mission Avenue), 7b (Rancho Carrillo), 8a (Rancho Santa Fe Road North), and 8c (Grand Avenue).

Unit 2 (Arrowhead Hot Springs Unit) was removed from the final designation because it was incorrectly mapped. Although the proposed rule correctly describes the Arrowhead Hot Springs unit in the text, the map provided in the proposed rule depicted an area known as Waterman Canyon.

Subunits 8e (Linda Vista), 9 (Double LL Ranch), and 10 (Highland Valley) were removed from consideration because we could not verify reported occurrences of *Brodiaea filifolia.*

We removed subunit 5a (Miller Mountain) from consideration because the plants in this area are mostly hybrids between *Brodiaea filifolia* and *Brodiaea orcuttii* (Boyd et al. 1992). No information is available regarding the number of pure *B. filifolia* within this occurrence and whether they can be considered as contributors to the long-term conservation of the species.

We removed a portion of lands in subunit 5b (Devil Canyon) from consideration because the area is not known to be occupied by *Brodiaea filifolia.*

We removed subunit 8b (Rancho Santalina/Loma Alta) from consideration under section 3(5)(A) of the Act because it is already receiving special management considerations (see the ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'').

We removed 205 ac (83 ha) of land in Riverside County identified in the proposed rule as containing features essential to the conservation of the species, but which were excluded under section 4(b)(2) of the Act. The lands removed were near Corona and in Moreno Valley. We removed these areas because they are not known to be occupied by *Brodiaea filifolia.* Approximately 3,062 ac (1,234 ha) of land in Riverside County containing features essential to the conservation of *B. filifolia* are excluded under section 4(b)(2) of the Act.

Six units/subunits are being excluded under section 4(b)(2) of the Act. Three subunits, including 4b (Casper's Park), 4c (Canada/Gobernadora), and 4g (Christianitos Canyon) are within the boundaries of the pending Orange County Southern Subregion NCCP/HCP, which includes the participation of the County of Orange and Rancho Mission Viejo, both of which are parties to a Settlement Agreement for the Ranch Plan. Subunits 6b (Mesa Drive) and 6d (Taylor/Darwin) are within the boundaries of the pending City of Oceanside Subarea Plan of the Northwestern San Diego County MHCP. Subunit 7a (Fox-Miller) is covered under the City of Carlsbad's approved HMP.

In this final rule, lands on Camp Pendleton that were excluded from proposed critical habitat under section 4(b)(2) of the Act are now exempt pursuant to section 4(a)(3) of the Act.

For more discussion about the areas exempted or excluded from this final designation, please refer to the section ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act.''

Overall, these refinements, removals, exemptions and exclusions resulted in a reduction from 4,690 ac (1,898 ha) included in the proposed designation to 597 ac (242 ha) included in the final designation (see Table 1 below).

Critical habitat unit/subunit	County	Proposed critical habitat (ac; ha)	Final critical habitat (ac; ha)
Unit 1: Los Angeles County	Los Angeles	Total 294; 119	Total 294; 119
1a: Glendora		96; 39	96; 39
1b: San Dimas		198; 80	198; 80
Unit 2: Arrowhead Hot Springs	San Bernardino	89; 36	0
Unit 3: Aliso Canyon		151; 61	0
Unit 4: Orange County	Orange	Total 1,860; 753	Total 0
4a: Arroyo Trabuco		74; 30	0
4b: Casper's Wilderness Park		259; 105	0
4c: Cañada Gobernadora/Chiquita Ridgeline		311; 126	0
4d: Prima Deschecha		119; 48	0
4e: Forster Ranch		96; 39	0
4f: Talega/Segunda Deshecha		190; 77	0
4g: Cristianitos Canyon		588; 238	0
4h: Cristianitos Canyon South		72; 29	0
4i: Blind Canyon		151; 61	0

Critical habitat unit/subunit	County	Proposed critical habitat (ac; ha)	Final critical habitat (ac; ha)
Unit 5: Northern San Diego County	San Diego	Total 1,527; 618	Total 249; 101
5a: Miller Mountain		1,263; 511	0
5b: Devil Canyon		264; 107	249; 101
Unit 6: Oceanside		Total 198; 81	Total 0
6a: Alta Creek		49; 20	0
6b: Mesa Drive		5; 2	0
6c: Oceanside East/Mission Avenue		64; 26	0
6d: Taylor/Darwin		80; 32	0
Unit 7		Total 125; 50	Total 0
7a: Fox-Miller		93; 38	0
7b: Rancho Carrillo		32; 13	0
Unit 8: San Marcos		Total 315; 127	Total 54; 22
8a: Rancho Santa Fe Road North		86; 35	0
8b: Rancho Santalina/Loma Alta		82; 33	0
8c: Grand Avenue		10; 4	0
8d: Upham		117; 47	54; 22
8e: Linda Vista		20; 8	0
Unit 9: Double LL Ranch		57; 23	0
Unit 10: Highland Valley		74; 30	0
Total		4,690; 1,898	597; 242

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 may 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 must contain the physical and biological features essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, areas that provide for the essential life cycle needs of a 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 require additional areas, 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, but not always, be essential to the conservation of the species and, therefore, typically 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 and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the

action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available in determining areas that are essential to the conservation of *Brodiaea filifolia.* We used data and information contained in, but not limited to, the proposed listing rule (59 FR 64812, December 15, 1994); the final listing rule (63 FR 54975, October 13, 1998); data and information from research and survey observations in published, peer-reviewed articles; data provided by the California Department of Fish and Game (CDFG); and data provided by the California Natural Diversity Database (CNDDB); data and information included in reports submitted during section 7 consultations; information contained in species analyses for individual and regional HCPs where *B. filifolia* is a covered species or is being proposed for coverage; data collected on Camp Pendleton; data collected from reports submitted by researchers holding section 10(a)(1)(A) recovery permits; and information received from local species experts. We also used information contained in comments received during the comment periods for the proposed rule and the draft economic analysis.

We are not designating areas outside the geographical areas known to be occupied by the species and identified in the final listing rule (63 FR 54975). The listing rule noted that populations were centered in the cities of Vista, San Marcos, and Carlsbad in San Diego County, in the vicinity of the Santa Rosa Plateau in Riverside County, with additional ''scattered'' populations in Orange, Los Angeles, Riverside, San Bernardino, and San Diego counties. Critical habitat is not being designated in San Bernardino, Orange and Riverside counties. Areas in Los Angeles and San Diego counties designated as critical habitat and listed in Table 1 are within the geographical areas known to be occupied by the species.

Habitat that contains the features essential to the conservation of the species was delineated by examining (1) species occurrence information in Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties from the CNDDB and from survey reports; (2) vegetation data layers from Orange, Riverside, and San Diego counties and vegetation data layers from the U.S. Forest Service's Cleveland National Forest for Los Angeles and San Bernardino counties; (3) Natural Resources Conservation Service's Soil Survey Geographic Database (SSURGO) soil data layers for Orange, Riverside, and San Diego counties, and State Soil Geographic Database (STATSGO) soil data layers for Los Angeles and San Bernardino counties; and (4) slope data derived from a 30-meter digital elevation model (DEM). These layers were overlaid on digital ortho quarter quadrangle (DOQQ) satellite imagery layers, and habitat was delineated in areas that had an extant species occurrence within them, had not undergone development, had the PCEs, including suitable soil and vegetation types, and had a slope of less than 20 degrees. After creating a GIS coverage of the essential areas, we created legal descriptions of these areas. We used a 100-meter grid to establish Universal Transverse Mercator (UTM), North American Datum (NAD) 27 coordinates which, when connected, provided the boundaries of the areas containing features essential to the conservation of the 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 propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features, otherwise referred to as primary constituent elements (PCEs), essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, germination, seed dispersal; and generally habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The specific PCEs required for *Brodiaea filifolia* ½ are derived from the physical and biological needs of the species as described below and in the final listing rule (63 FR 54975, October 13, 1998).

Brodiaea filifolia is a perennial herb in the Liliaceae (lily family) that annually produces leaves and flower stalks from underground corms (underground bulb-like storage stem). Corms are dormant in the summer, but leaves begin growing after the first significant rains in the fall saturate the soil. At the time of flowering, the leaves of B. filifolia are dead or nearly so. The flowering period lasts for two to three weeks in late spring to early summer. Young plants produce only leaves for a few seasons before being capable of producing flower stalks. Even mature specimens may not flower every year, depending upon environmental conditions. It is estimated that about 10 percent of all specimens flower in an average rainfall year (Vince Scheidt *in litt.* 2005). The six perianth segments are violet, with their tips spreading. The staminodia (characteristic sterile stamens) are narrow and pointed.

All species of *Brodiaea* are self-incompatible (incapable of producing seeds with pollen from flowers on the same plant or from flowers on plants with the same allele at the self-incompatibility locus), requiring cross-pollination from plants of the same species but with different alleles at this locus. Dispersal of seeds from an individual is likely localized, leading to patches of plants with the same self-incompatible alleles. This means that effective pollination for seed set requires pollen dispersal over a distance between plants with different self-incompatible alleles. Likewise, this necessitates maintenance of pollinator habitat and dispersal corridors. The vegetative production of small cormlets by the corm is the principal means by which plants of the genus *Brodiaea* perpetuate themselves (Niehaus 1971).

Members of the genus *Brodiaea* likely rely on Tumbling Flower Beetles (Mordellidae, Coleoptera) and Sweat Bees (Halictidae, Hymenoptera) for cross-pollination (Niehaus 1971). The home ranges and species fidelity of these pollinators is not known. Bell and Rey (1991) report that native bees observed pollinating *Brodiaea filifolia* on the Santa Rosa Plateau in Riverside County included *Bombus californicus* (Apidae, Hymenoptera), *Hoplitus* sp. (Megachilidae, Hymenoptera), *Osmia* sp. (Megachilidae, Hymenoptera), and an unidentified Anthophorid (digger-bee). Anthophoridae and Halictidae are reported to be important pollinators of *B. filifolia* at a study site in Orange County (Glen Lukos Assoc. 2004). Alternative pollen source plants may be necessary for the persistence of these

insects when *B. filifolia* is not in flower seasonally or annually because of poor environmental conditions.

Studies to quantify the distance that bees will fly to pollinate their host plants are limited in number, but the few that exist show that some bees will routinely fly from 328 to 984 feet (ft) (100 to 500 meters (m)) to pollinate plants (Thorp and Leong 1995; Schulke and Waser 2001). In a study of experimental isolation and pollen dispersal of *Delphinium nuttallianum* (Nuttall's larkspur), Schulke and Waser (2001) report that adequate pollen loads were dispersed by bumblebees within control populations and in isolated experimental ''populations'' from 328 to 1,312 ft (100 m to 400 m) distant from the control populations. One of the several pollinator taxa effective at 1,312 ft (400 m) was *Bombus californicus,* one of four bee species observed pollinating *Brodiaea filifolia* by Bell and Rey (1991). Studies by Steffan-Dewenter and Tscharntke (2000) have demonstrated that it is possible for bees to fly as far as 3,280 ft (1,000 m) to pollinate flowers, and at least one study suggests that bumblebees may forage many kilometers from a colony (Sudgen 1985).

The historical range of *Brodiaea filifolia* extends from the foothills of the San Gabriel Mountains in Los Angeles County, east to the western foothills of the San Bernardino Mountains in San Bernardino County, south through eastern Orange and western Riverside counties to central (Vince Scheidt *in litt.* 2005) San Diego County. This species is usually found in herbaceous plant communities that occur in open areas on clay soils, soils with a clay subsurface, or clay lenses within loamy, silty loam, loamy sand, silty deposits with cobbles or alkaline soils, ranging in elevation from 100 ft (30 m) to 2,500 ft (765 m), depending on soil series. These herbaceous communities are generally classified as annual grassland, valley needlegrass grassland, valley sacaton grassland, alkali playa, southern interior basalt vernal pools, San Diego mesa hardpan vernal pools, and San Diego mesa claypan vernal pools (Holland 1986). Based upon dominant species, these communities have been further divided into series which include, but are not limited to, California annual grassland, nodding needlegrass, purple needlegrass, foothill needlegrass, saltgrass, alkali grassland, alkali playa, and bush seepweed and habitats such as San Diego mesa vernal pools, San Jacinto Valley vernal pools, and Santa Rosa Plateau vernal pools (Sawyer and Keeler-Wolf 1994). *B. filifolia* grows in interstitial areas (often narrow bands of habitat surrounded by other vegetation) in association with coastal sage scrub in some locations, including portions of Los Angeles and San Bernardino counties.

Brodiaea filifolia has also been found in the San Mateo Wilderness near the northern border of San Diego and Riverside counties and in the Miller Mountain area in the Santa Ana Mountains of western Riverside County. These occurrences appear to be mostly hybrids between *B. filifolia* and *B. orcuttii,* although plants of both species can also be found. Plants in the San Mateo Wilderness, mostly hybrid types, have been observed along the banks of, and within, intermittent stream channels. Plants in the Miller Mountain area have been observed on clay soils in southern needlegrass grassland (Boyd *et al.* 1992). In Miller Canyon, a tributary that drains the southern flank of Miller Mountain, *B. filifolia* and some hybrids are found on deposits of gravel, cobble, and small boulders along the stream channel in association with tussocks of *Juncus macrophyllus* (long-leaved rush) and *Muhlenbergia rigens* (deer grass) and in vernal seeps and on open, clay benches (Boyd *et al.* 1992).

All members of the genus *Brodiaea* appear to require full sun, and many tend to occur on only one or a few soil series (Niehaus 1971). In San Diego, Orange, and Los Angeles counties, occurrences of *Brodiaea filifolia* are highly correlated with specific clay soil series such as, but not limited to, Alo, Altamont, Auld, and Diablo or clay lens inclusions in a matrix of loamy soils such as Fallbrook, Huerhuero, and Las Flores series (63 FR 54975, CNDDB 2003, Service GIS data 2004). In San Bernardino County, the species is associated with Etsel family-Rock outcrop-Springdale and Tujunga-Urban land-Hanford soils (Service GIS data 2004). In western Riverside County, the species is often found on alkaline silty-clay soil series such as, but not limited to, Domino, Grangeville, Waukena, and Willows or on clay loam soils underlain by heavy clays derived from basalt lava flows (*i.e.*, Murrieta series on the Santa Rosa Plateau) (U.S. Department of Agriculture 1971, Bramlet 1993, CNDDB 2003). On these soils, *B. filifolia* is typically found as a component of native perennial and annual grasslands. In the City of San Marcos in San Diego County, and near Hemet and on the Santa Rosa Plateau in Riverside County, these grasslands are often part of the watersheds for vernal pool and playa complexes (Bramlet 1993; Service 1998; CNDDB 2005). These soils facilitate the natural process of seed dispersal and germination, cormlet disposition to an appropriate soil depth, and corm persistence through seedling and adult phases of flowering and fruit set described earlier.

Clay soils dry out and exhibit surface cracks as surface moisture is depleted prior to the next rainy season. During this period the capsules of many bulb and corm-forming species mature. The seeds are released to fall to the ground, either on the surfaces or into the cracks in the soil. In this manner some seeds are dispersed into several horizons in the soil. With the fall and winter rains, the clay matrix hydrates, softens, expands and the cracks close up. Seedlings at first only produce leaves and a specialized root. Seedlings of *Brodiaea filifolia* are equipped with a specialized succulent contractile root. This organ, lost by mature corms, facilitates the seasonal downward movement of the young plant (Niehaus 1971). The contractile root swells with moisture in the wet season, creating space below the developing cormlet. As the soil dries the contractile root dries and shrinks longitudinally, drawing the young cormlet downward in the soil. This process continues to a point at which the soil moisture is adequate to keep the contractile root from shrinking, resulting in the location of the corm in the appropriate soil horizon for survival. Cormlets produced annually from existing older corms, also produce contractile roots which draw them laterally away from the parent corm (Niehaus 1971).

The size of a particular population of *Brodiaea filifolia* and other members of the species, as well as other corm and bulb forming species, is often measured by counting numbers of standing flower stalks. However, because more plants flower in wet years than dry years, flowering plants likely represent only a portion of the total population of plants present at any given site. In addition to the annual fluctuation in numbers of flowering plants, seedlings and young plants likely only produce leaves for a few years before they are able to produce flower stalks. These vegetative plants may go undetected in surveys.

Space for Growth of Individuals and Populations and for Normal Behavior

Habitats with combinations of appropriate elevation and clay or clay associated soils, on mesas or low to moderate slopes that support open native or annual grasslands within open coastal sage scrub or coastal sage scrub-chaparral communities (PCE 1A), or in floodplains or in association with vernal pool or playa complexes that support various grassland or scrub communities (PCE 1B), or soils derived from olivine basalt lava flows on mesas and slopes

that supports vernal pools with grassland, oak woodland, or savannah communities (PCE 1C), or sandy loam soils derived from basalt and granodiorite parent material with deposits of cobbles and boulders supporting intermittent seeps, and open marsh communities (PCE 1D), provide space for the growth and persistence of *Brodiaea filifolia.* These habitats also sustain the pollinators needed for cross-pollination.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

A natural generally intact surface and subsurface structure, not permanently altered by anthropogenic land use activities, and associated physical processes such as a hydrological regime (PCE 2) is necessary to provide water, minerals, and other physiological needs for *Brodiaea filifolia.* A natural hydrological regime includes seasonal hydration followed by drying out of the substrate to promote growth of active plants and new corms for the following season. These conditions are also necessary for the normal development of seedlings and young vegetative cormlets.

The conservation of *Brodiaea filifolia* is dependent on several factors that include, but are not limited to, maintenance of areas of sufficient size and configuration to sustain natural ecosystem components, functions, and processes (e.g., full sun exposure, natural fire and hydrologic regimes, adequate biotic balance to prevent excessive herbivory); protection of existing substrate continuity and structure, connectivity among groups of plants within geographic proximity to facilitate gene flow among the sites through pollinator activity and seed dispersal; and sufficient adjacent suitable habitat for vegetative reproduction and population expansion. The areas being designated as critical habitat provide one or more of the physical or biological features essential to the conservation of this species.

Lands designated as critical habitat for *Brodiaea filifolia* occur within the historical range of the species. Based on the best available scientific information available regarding the life history, ecology, and distribution of this species, we believe that the primary constituent elements for *B. filifolia* are:

(1) Appropriate soil series and associated vegetation at suitable elevations of either:

(A) Clay soil series of various origins (e.g., Alo, Altamont, Auld, Diablo), clay lenses found as unmapped inclusions in other soils series, or within loamy soils underlain by a clay subsoil (e.g., Fallbrook, Huerhuero, Las Flores) that generally occur on mesas and gentle to moderate slopes, or in association with vernal pools, between the elevations of 100 ft (30 m) and 2,500 ft (765 m) and support open native or annual grassland communities, within open coastal sage scrub or coastal sage scrub-chaparral communities; or

(B) Silty loam soil series underlain by a clay subsoil or caliche that are generally poorly drained, moderately to strongly alkaline, granitic in origin (e.g., Domino, Grangeville, Waukena, Willows), that generally occur in low-lying areas and floodplains, often in association with vernal pool or playa complexes, between the elevations of 600 ft (180 m) and 1,800 ft (550 m) and support native, annual, or alkali grassland or scrub communities; or

(C) Clay loam soil series (e.g., Murrieta) underlain by heavy clay loams or clays derived from olivine basalt lava flows that generally occur on mesas and gentle to moderate slopes between the elevations of 1,700 ft (520 m) and 2,500 ft (765 m) and support native or annual grassland or oak woodland savannah communities associated with basalt vernal pools; or

(D) Sandy loam soils derived from basalt and granodiorite parent materials, deposits of gravel, cobble, and boulders, or hydrologically fractured weathered granite in intermittent streams and seeps that support open riparian and freshwater marsh communities associated with intermittent drainages, floodplains, and seeps generally between 1,800 ft (550 m) and 2,500 ft (765 m).

(2) Areas with an intact surface and subsurface structure not permanently altered by anthropogenic land use activities (e.g., deep, repetitive disking; grading). These features as well as associated physical processes (e.g., full sunlight exposure) are essential to maintain those substrate and vegetation types where *Brodiaea filifolia* is found and to support pollinator assemblages necessary to facilitate gene flow within and among populations of *B. filifolia.*

Criteria Used To Identify Critical Habitat

We delineated critical habitat using the following criteria: (1) Essential occurrences; (2) presence of suitable vegetation; (3) presence of suitable soil types; and (4) an area about 820 ft (250 m) of vegetation surrounding each occurrence to provide for pollinator movement and habitat. We then evaluated the critical habitat areas to determine if any areas should be exempted or excluded from designation under sections 4(a)(3) or 4(b)(2) of the Act.

We defined habitat containing features essential to the conservation of the species as areas of intact, occupied habitat and/or areas necessary to maintain gene flow, and/or areas containing significant populations.

In our proposed rule we defined significant populations supporting 1,000 or more naturally occurring individuals of *Brodiaea filifolia* and/or those found in unique habitat; for example, populations found within an atypical vegetative community, on atypical soils, and/or at an atypical elevation. Populations found within unique habitat types may harbor genetic diversity that facilitates their persistence in these areas. This overall diversity may be important to the conservation of the species.

In this final designation, we defined significant occurrences as those containing 850 plants or more. This threshold of significance was derived from a review of all known population estimates in areas proposed for critical habitat designation. A review of the population estimates in the proposed units revealed a significant step between populations containing 250 or fewer plants and those supporting 850 or more. Barrett and Kohn (1991) have discussed the consequences of small population size in plants. They stress the need for maintaining genetic variability, especially for rare alleles. Maintaining diversity of self-incompatible alleles is important to ensure production of fertile seeds and thus is important for the survival of smaller populations. The likelihood of maintaining this diversity is increased with more individuals. We believe that occurrences supporting at least 850 plants have the most potential to contribute to the long-term conservation of the species.

Often significant populations are also peripheral populations. Peripheral populations of a species are separable by geographical and/or ecological differences from central populations (Lesica and Allendorf 1995). Conservation of species may depend upon protection of the genetic variability present across the range of a species. Reduced gene flow and limited seed dispersal may contribute to the genetic diversity of peripheral populations attributable to genetic drift from central populations. Population divergence may also be attributed to differences in habitat such as soil types, fire frequency, and climate (Lesica and Allendorf 1995). Ornduff (1966) found the highest concentration of morphological and cytological variants

at the margin of the geographic range of species of *Lasthenia*. For these reasons, conservation of geographically (e.g., Los Angeles County) and ecologically (e.g., Devil Canyon) peripheral populations may be essential for the conservation of *B. filifolia*.

Currently, the exact number of extant populations or occurrences of *Brodiaea filifolia* is unknown. Reasons for this include the lack of surveys in all areas of suitable habitat, false negative survey results yielded during inappropriate seasons, and variation in how survey data is recorded. For example, some surveyors may record populations within close proximity as a single occurrence while others may record each population as an individual occurrence. Table 3 of Bramlet and White (2004) contains a working list of approximately 83 sites where *B. filifolia* has been reported. However, some of these sites are included with others as single occurrences by the CNDDB, others have no locator, no population description, are translocated populations, or were considered extirpated. These sites were not considered further. Occurrences comprised solely of translocated plants were not considered to contain the features essential to the conservation of the species because their potential for long-term survival and contribution to the species' gene pool is currently unknown.

Where possible, we delineated a vegetative area of 820 ft (250 m) around each occurrence included in this designation to provide for pollinator movement and habitat. One study found a 50 percent reduction in seed set when pollinator habitat was 3,280 ft (1,000 m) from a target plant species and at 820 ft (250 m) for another target plant species (Steffan-Dewenter and Tscharntke 1999). Studies also suggest that the degradation of pollinator habitat is likely to adversely affect the abundance of pollinator species (Jennersten 1988; Rathcke and Jules 1993; Steffan-Dewenter and Tscharntke 1999). The various pollinator species associated with *Brodiaea filifolia* as well as studies quantifying insect pollinating flight distances are discussed in the ''Background'' section of this rule. Studies to quantify the distance that bees will fly to pollinate their host plants are limited in number, but the few that exist indicate that some bees will routinely fly from 328 to 984 ft (100 to 500 m) to pollinate plants with some flying at least 3,280 ft (1,000 m) to pollinate flowers (Schulke and Waser 2001; Steffan-Dewenter and Tscharntke 2000). Because we do not currently have much information on specific visitation behavior of the pollinator species identified on *B. filifolia*, we based the 820 ft (250 m) distance on a conservative estimate for mean routine flight distance for bees. These 820 ft (250 m) areas contain suitable soils and vegetation required by all stages of the species' lifecycle and provide for gene flow, pollen dispersal, seed dispersal, and germination.

When determining critical habitat boundaries, we made every effort to avoid the designation of developed land such as buildings, paved areas, and other structures that lack PCEs for *Brodiaea filifolia*. Any such structures, and the land under them, inadvertently left inside the mapped critical habitat boundaries due to scale have been excluded by text in the rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the identified primary constituent elements (PCEs) may require special management considerations or protection. Threats to the PCEs for *Brodiaea filifolia* include the direct and indirect effects of habitat loss and degradation from urban development; invasive plant species; recreational activities; agricultural practices; mowing; and dumping of manure and sewage sludge on suitable habitat.

Loss and degradation of habitat from development was cited in the final listing rule as a primary cause for the decline of *Brodiaea filifolia*. Most of the populations of this species are located in San Diego, Orange, and Riverside counties. These counties have had and continue to have increasing populations and attendant housing pressure. Natural areas in these counties are frequently near or bounded by urbanized areas. Urban development removes the plant community components and associated clay soils identified in the primary constituent elements. This eliminates or fragments the populations of *B. filifolia*. Urbanization may also indirectly alter surface as well as subsurface layers to the degree that they will no longer support plant community types known to be associated with *B. filifolia*.

Invasive plant species may alter the vegetation composition or physical structure identified in the primary constituent elements to an extent that the area does not support *B. filifolia* or its associated vegetation and invasive species may compete for space and resources.

Authorized and unauthorized recreation activities may impact the vegetation composition and soil structure to an extent that the area will no longer have intact soil surfaces or support associated vegetation as identified in the primary constituent elements. Public hiking trails and/or off-road vehicle activity are examples of this type of activity.

Some methods of mowing and disking for agricultural or fire management may preclude the full and natural development of *Brodiaea filifolia* by adversely affecting the primary constituent elements. Mowing may reduce the production and dispersal of seeds, alter the associated vegetation needed for pollinator activity, or reduce the number and vigor of plants present by cutting off the leaves (PCE# 2). Dumping of sewage sludge can cover plants as well as the soils they need. In addition this practice can alter the chemistry of the substrate and lead to alterations in the vegetation supported at the site (PCE# 1).

Several management actions can preserve the PCEs for *Brodiaea filifolia*. Foremost among these is avoidance of habitat known to be occupied. However, set-aside areas must usually include some form of management to address other threats to the PCEs (e.g., non-native plant invasion). Loss of habitat or degradation of soils can be avoided with appropriate grading and soil management as part of development. Slope grading so as to avoid inflow or outflow of sediments may protect the integrity of the onsite soils that support *B. filifolia* and associated vegetation. Dumping of sewage sludge should be avoided in all areas containing *B. filifolia*. The components in sludge can permanently alter the soil chemistry as well as the vegetation it supports.

Invasive plant species may be managed by reducing the overgrowth of these plants through a combination of clearing, mowing, and/or thatch removal. Any temporary impacts from recreational activities could be timed to avoid the most sensitive time of year and hydrological conditions for *Brodiaea filifolia*. Mowing and disking for agricultural or fire suppression purposes could be located in such a manner so as to avoid known populations of the species. Habitat enhancement can allow for additional habitat for pollinators as well as for *B. filifolia*.

Critical Habitat Designation

We are designating 597 ac (242 ha) of critical habitat within 4 units/subunits

in Los Angeles and San Diego counties. Habitat containing features essential to the conservation of *Brodiaea filifolia* in Riverside, Orange, and San Diego counties covered by approved and/or pending HCPs, or a Settlement Agreement has been excluded from this final designation. Habitat containing features essential to the conservation of *B. filifolia* on Camp Pendleton is exempt under section 4(a)(3) of the Act (see ''Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act'' for a detailed discussion). Areas designated as critical habitat are under Federal and private ownership. The species is not currently known to occur on any Tribal-owned lands within its range; therefore, no Tribal-owned lands are included in this designation. Table 2 provides the approximate area of critical habitat by county and land ownership. Table 3 provides the approximate area of areas containing features essential to the conservation of the species, areas excluded from the final designation, and total critical habitat designated for *B. filifolia*.

TABLE 2.—LAND OWNERSHIP ACREAGE (ACRES (AC); HECTARES (HA)) AND COUNTY OF UNITS AND SUBUNITS DESIGNATED AS FINAL CRITICAL HABITAT FOR BRODIAEA FILIFOLIA.

Critical habitat unit & subunit	County	Private (ac; ha)	*Federal (ac; ha)	Total (ac; ha)
Unit 1: Los Angeles County	Los Angeles	.....	.....	.....
1a: Glendora	.....	96; 39	0	96;39
1b: San Dimas	.....	178; 72	20; 8	198; 80
Unit 5: Northern San Diego County	San Diego	.....	.....	.....
5b: Devil Canyon	.....	0	249; 101	249; 101
Unit 8: San Marcos	.....	.....	.....	.....
8d: Upham	.....	54; 22	0	54; 22
Total	.....	328; 133	269; 109	597; 242

*Federal lands included in this designation are managed by the Angeles National Forest and the Cleveland National Forest.

TABLE 3.—AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF THE SPECIES, AREAS EXEMPTED OR EXCLUDED FROM THE DESIGNATION, AND TOTAL CRITICAL HABITAT DESIGNATED FOR *Brodiaea filifolia* IN ACRES (AC) AND HECTARES (HA)

Please note that discrepancies in totals are due to rounding.

County	Total habitat with features essential to the conservation of the species	Habitat exempted/excluded from the final designation	Designated critical habitat
Los Angeles	294 ac	0 ac	294 ac.
	119 ha	0 ha	119 ha.
San Bernardino	0 ac	0 ac	0 ac.
	0 ha	0 ha	0 ha.
Orange	1,158 ac	1,158 ac	0 ac.
	469 ha	469 ha	0 ha.
Riverside	3,062 ac	3,062 ac	0 ac.
	1,239 ha	1,239 ha	0 ha.
San Diego	1884 ac	1580 ac	303 ac.
	762 ha	639 ha	123 ha.
Total	6,397 ac	5800 ac	597 ac.
	2589 ha	2,347 ha	242 ha.

The units described below constitute our best assessment at this time of those areas containing features essential to the conservation of *Brodiaea filifolia.* Each unit or subunit contains the PCEs related to an intact surface and subsurface structure essential to maintain the identified soil and vegetation types where the species is found, and support for pollinator assemblages necessary to facilitate gene flow within and among populations of *B. filifolia*. Lands within each unit or subunit are also currently occupied and within the historical range of *B. filifolia*.

Descriptions of each final critical habitat unit and the reasons why they are included in the designation are listed below. Unit descriptions also include the size of the unit, the general vegetation and soil types present in the unit, any known threats specific to the unit, and numbers of individual plants, if known. Because the species may be present as mature but non-flowering corms or immature corms rather than flowering plants, the number of individuals given should be considered an estimate of the minimum number of plants present. In this final rule we have retained the same unit/subunit identifiers that we used in the proposed designation for this species. We believe the consistent use of one set of unit/subunit identifiers allows for easier comparison between the proposed critical habitat and final critical habitat maps.

Unit Descriptions

Unit 1: Los Angeles County Unit—This unit consists of 294 ac (119 ha) divided into 2 subunits.

Subunit 1a: Glendora. This subunit, known to be occupied at the time of listing, consists of 96 ac (39 ha) of private lands in the City of Glendora, in the foothills of the San Gabriel Mountains, eastern Los Angeles County. Lands within this subunit contain Cieneba-Exchequer-Sobrant soils, a type

of silty loam, and consist primarily of southern mixed chaparral and coastal sage scrub. This population represents only one of two occurrences located in the foothills of the San Gabriel Mountains part of the Transverse Range, where the species was historically found, and represents the nearest genetic connection to the San Dimas subunit. This unit supports a significant occurrence of about 2,000 *Brodiaea filifolia* associated with annual grassland interstices in mixed chaparral. This occurrence is also significant because it is the northernmost known occurrence of the species. Populations reported at this site in 1991 represent the rediscovery of a population last documented in 1921 (CNDDB 2005). The site is owned and managed by the Glendora Community Conservancy (GCC). Currently, no management plan has been developed for these lands, although the GCC has indicated that they are willing to develop a management plan for this species on their property (Ann Croissant, GCC pers. comm. to G. Wallace USFWS 2005). Special management considerations may be required to control invasive plant species; to maintain the identified vegetation types as well as pollinator habitat essential to the conservation of the species.

Subunit 1b: San Dimas subunit. This subunit consists of 198 ac (80 ha) of Federal (Angeles National Forest) and privately owned lands on the boundary between the City of Glendora and the City of San Dimas in the foothills of the San Gabriel Mountains of eastern Los Angeles County. Lands within this subunit contain Cieneba-Exchequer-Sobrant soils, a type of silty loam, and consist primarily of coastal sage scrub and southern mixed chaparral. Lands in this subunit support two significant populations totaling about 6,000 plants associated with interstitial annual grassland near chaparral (CNDDB 2005). The occurrences are also significant because they are peripheral to the range of the species. This is one of only two areas in the foothills of the San Gabriel Mountains of the Transverse Range where *Brodiaea filifolia* occurred historically, and represents the only likely genetic connection to plants in the Glendora subunit. While *B. filifolia* is not currently known to occur on the Angeles National Forest, it occurs just outside the boundary. Approximately 20 ac (8 ha) of Angeles National Forest lands are included in the designation to provide for pollinator habitat. The City of Glendora conducted an appraisal for a portion of the area for consideration of acquisition, but no action to acquire the property has been taken (D. Walter, Senior Planner City of Glendora pers. comm. to G. Wallace USFWS 2005). This site is threatened by urban development. The City of Glendora has reviewed several proposals for development of this area (D. Walter, Senior Planner City of Glendora pers. comm. to G. Wallace USFWS 2005). In addition, the City of Glendora has halted illegal grading on a property in the northern portion of the subunit. Therefore, special management may be required to minimize disturbance to the surface and subsurface structure within this subunit and to maintain the identified soil and vegetation types as well as pollinator habitat essential to the conservation of the species.

Subunit 5b: Devil Canyon. This subunit consists of 249 ac (101 ha) of federally managed land (Cleveland National Forest) in northeastern San Diego County. Lands within this subunit support an occurrence of *Brodiaea filifolia* estimated in the thousands (CNDDB 2005). Although there are some hybrids of *B. filifolia* and *B. orcuttii* in this subunit, the level of hybridization is less extensive than in the Miller Mountain area; therefore, it is likely that a minimum of 850 plants are pure *B. filifolia*. This occurrence is also significant in that it is found at the uppermost elevation range within the geographic area occupied by the species. This occurrence is found in an ecologically unique habitat of vernal seeps and drainages on low granitic outcrops in chamise chaparral (CNDDB 2005). The Cleveland National Forest does not currently have a management plan specific to *Brodiaea filifolia*, however, timing of cattle grazing has been adjusted to avoid the flowering period for the species (Kirsten Winter, Forest Botanist, pers. comm. 2004). Special management may be required to minimize disturbance to the surface structure within this subunit, to control invasive species, and to maintain the identified vegetation types as well as pollinator habitat essential to the conservation of the species.

Subunit 8d: Upham. This subunit consists of 54 ac (22 ha) of privately owned land in the City of San Marcos, northern San Diego County. The subunit is immediately surrounded by urban development. However, areas of extant valley and foothill grasslands exist in the surrounding area. This occurrence contained about 1,000 plants in 1986 and again in 1995 (CNDDB 2005). In addition, the occurrence of *Brodiaea filifolia* in this subunit occurs in a unique habitat in that the plants are in association with vernal pools. Plants in this subunit are threatened by urban development, and special management may be required to minimize disturbance to the surface and subsurface structure within this subunit and to maintain the identified soil and vegetation types.

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. 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 species.

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 a time as a proposed designation is finalized, any reasonable and prudent alternatives or reasonable and 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 species or 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 *Brodiaea filifolia* or its critical habitat will require section 7 consultation. Activities on non-Federal 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) will also continue to be subject to the section 7 consultation requirement. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Each of the areas designated in this rule has been determined to contain sufficient PCEs to provide for one or more of the life history requirements of *B. filifolia*. In some cases, the PCEs are being taken into consideration in ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of *Brodiaea filifolia.* Federal activities that, when carried out, may adversely affect critical habitat for *B. filifolia* include, but are not limited to:

(1) Removing, thinning, or destroying *Brodiaea filifolia* habitat (as defined in the ''Primary Constituent Elements'' discussion), whether by burning, mechanical, chemical, or other means (*e.g.*, plowing, grubbing, grading, grazing, woodcutting, construction, road building, mining, mechanical weed control, herbicide application, etc.);

(2) Activities that degrade or destroy *Brodiaea filifolia* habitat (and its PCEs) including, but not limited to, livestock grazing, clearing, disking, farming, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy recreational use;

(3) Activities that diminish habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, or fragmentation);

(4) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the Clean Water Act or activities carried out by or licensed by the Environmental Protection Agency (EPA), that could alter watershed or soil characteristics in ways that would alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain *Brodiaea filifolia* habitat (these activities include, but are not limited to, altering the natural fire regime either through fire suppression or by using prescribed fires that are too frequent or poorly timed; development, including road building and other direct or indirect activities; and agricultural activities, livestock grazing, and vegetation manipulation such as clearing or grubbing in the watershed upslope from *B. filifolia*);

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that could result in excavation, or mechanized land clearing of *Brodiaea filifolia* habitat; and

(6) Licensing of construction of communication sites by the Federal Communications Commission or funding of construction or development activities by the U.S. Department of Housing and Urban Development that could result in excavation, or mechanized land clearing of *Brodiaea filifolia* habitat.

The 4 critical habitat units are within the geographical area occupied by the species and contain the features essential to the conservation of *Brodiaea filifolia.* Additionally, all habitats within this designation are likely to be used by the pollinators for the species.

Application of Section 3(5)(A), Exemption Under Section 4(a)(3), and Exclusions Under Section 4(b)(2) of the Act

In our critical habitat designations, we use the provisions outlined in sections 3(5)(A), 4(a)(3), and 4(b)(2) of the Act to evaluate those specific areas that we are considering for critical habitat designation. Lands that we determined do not meet the definition of critical habitat under section 3(5)(A), lands that have been exempted under section 4(a)(3), and areas excluded under section 4(b)(2) include those already receiving special management considerations or protection, are covered by legally operative HCPs that include *Brodiaea filifolia* as a covered species, are covered by a INRMP that was determined to provide a benefit to the species, or are proposed for coverage in a draft HCP or other identified conservation effort for which we have a reasonable expectation will reach a successful outcome.

Application of Section 3(5)(A) of the Act

Section 3(5)(A) of the Act defines critical habitat as 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 (I) essential to the conservation of the species and (II) which may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species at the time of listing that do not contain the features essential for the conservation of the

species are not, by definition, critical habitat. Similarly, areas within the geographical area occupied by the species at the time of listing containing essential physical or biological features that do not require special management considerations or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the features essential to the conservation of the species located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets two criteria: (1) The plan provides management, protection or enhancement to the PCEs at least equivalent to that provided by a critical habitat designation; and (2) the Service has a reasonable expectation that the management, protection or enhancement actions will continue for the foreseeable future.

We are not including habitat containing features essential to the conservation of *Brodiaea filifolia* in subunit 8b (Rancho Santalina/Loma Alta) in the City of San Marcos, San Diego County, California, under section 3(5)(A) of the Act. This subunit is composed of two properties, Rancho Santalina and Loma Alta. Rancho Santalina has completed a long-term management plan that specifically addresses *B. filifolia.* Likewise, the Loma Alta development has submitted a Perpetual Habitat Management Plan that addresses *B. filifolia.* In determining whether an area is adequately managed and does not require special management, the Service generally evaluates existing management to determine whether it provides (1) a conservation benefit to the species; (2) reasonable assurances for implementation; and (3) reasonable assurances that conservation efforts will be effective.

The Rancho Santalina project includes a completed a long-term management plan in November 2003, specifically for the long-term protection and enhancement of *Brodiaea filifolia* (Dudek and Associates 2003). Approximately 1,500 plants on 5.8 acres will be included in a Preserve Site. Impacted plants (about 430) from the site will be translocated to the contiguous 1 ac (.4 ha) area. Additional plants will be translocated from the Las Posas Road/State Route 78 Interchange Project. The total acreage of the Preserve Site is 6.8 acres. The site will be preserved and managed in perpetuity with funding provided through a non-wasting endowment of $103,888 (Office of Administrative Law 2003). The site will be protected from human and vehicular access by perimeter fencing and signage and will be part of the Northwestern San Diego County Multiple Habitat Conservation Program preserve area.

The goals of the management plan are to preserve the natural population and translocated plants of *Brodiaea filifolia,* and to sustain the coastal sage scrub and grassland vegetation to support and buffer the population on site. The site will be monitored for translocation success for seven years.

The Loma Alta project has completed a Perpetual Land Management Plan that provides a conservation benefit for *Brodiaea filifolia.* An area of 0.74 ac (0.3 ha) that has been known to support approximately 4,000 plants will be included in the 4.86 acre Loma Alta Environmental Preserve. A conservation easement was placed over the Preserve area in December 2003 (City of San Marcos 2003). Management provisions for the site include 12 visits per year to the site: 9 visits to check for fence breaks and unauthorized activities, 1 visit to complete vegetation assessments including the current year's population of *B. filifolia,* 1 visit to remove trash and exotic species, and 1 visit for a spring point avian survey.

We found that most of the management actions proposed in the two management plans outlined above would be effective and provide a conservation benefit for *B. filifolia.* Therefore, all of these areas containing features essential to the conservation of *B. filifolia* within the Rancho Santalina/Loma Alta subunit (8b) are being removed from consideration in this final critical habitat designation because these lands are deemed to be adequately managed pursuant to section 3(5)(A) of the Act.

Relationship of Critical Habitat to Department of Defense Lands

Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended the Act by adding a new section 4(a)(3)(B) to address the relationship of INRMPs to critical habitat. This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (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 determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We received comments from the U.S. Marine Corps regarding the proposed critical habitat designation, and economic impact and national security impact on Department of Defense lands. We specifically requested information from the Department of Defense regarding the benefits of any INRMP to *Brodiaea filifolia* in the proposed rule (69 FR 71284).

Application of Section 4(a)(3) to Camp Pendleton

In the proposed rule, we excluded habitat containing features essential to the conservation of *Brodiaea filifolia* within mission-critical training areas on Camp Pendleton (Camp Pendleton) under section 4(b)(2) of the Act. In this final rule, Camp Pendleton is exempt from critical habitat pursuant to section 4(a)(3) of the Act. Thus, no lands owned or controlled by Camp Pendleton are being designated as critical habitat for *B. filifolia.*

In November 2001, Camp Pendleton completed their INRMP (U.S. Marine Corps 2001), which includes the following conservation measures for *Brodiaea filifolia:* (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 *B. filifolia* and to trigger section 7 consultations if an action may affect the species; and (4) transplantation when avoidance is not possible. These measures are established, ongoing aspects of existing programs that provide a benefit to *B. filifolia.* Camp Pendleton also has Base directives and Range and Training Regulations that are integral to their INRMP, and that provide benefits to *B. filifolia.* Camp Pendleton implements Base directives to avoid and minimize adverse effects to *B. filifolia,* such as: (1) Bivouac, command post, and field support activities should be no closer than 164 ft (50 m) to occupied habitat year round; (2) limiting vehicle and equipment operations to existing road and trail networks year round; and (3) requiring environmental clearance prior to any soil excavation, filling, or grading. Camp Pendleton has also contracted for and funded surveys for *B. filifolia* in summer 2005 and a GIS-

based monitoring system which will allow them to better manage listed species on Camp Pendleton, including *B. filifolia.*

Camp Pendleton has also demonstrated ongoing funding of their INRMP and management of endangered and threatened species. In Fiscal Year 2002, Camp Pendleton spent approximately $1.5 million on the management of federally listed species. In Fiscal Year 2003, they expended over $5 million to fund and implement their INRMP, including management actions that provided a benefit for *Brodiaea filifolia.* Moreover, in partnership with the Service, Camp Pendleton is funding two Service biologists to assist in implementing their Sikes Act program and buffer lands acquisition initiative.

Based on Camp Pendleton's past funding history for listed species and their Sikes Act program (including the management of *Brodiaea filifolia*), there is a high degree of certainty that Camp Pendleton will implement their INRMP in coordination with the Service and the CDFG in a manner that provides a benefit to *B. filifolia,* coupled with 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 *B. filifolia.* The management programs, Base directives, and Range and Training Regulations to avoid and minimize impacts to *B. filifolia* are consistent with section 7 consultations with Camp Pendleton. Therefore, the Secretary has found that the INRMP for Camp Pendleton provides a benefit for *B. filifolia* and is exempting all lands on Camp Pendleton from critical habitat pursuant to section 4(a)(3) of the Act.

Currently, we are in the process of completing a programmatic section 7 consultation for upland species on Camp Pendleton. *Brodiaea filifolia* is addressed in this uplands species consultation. When this consultation is completed, we anticipate that Camp Pendleton will incorporate the conservation measures from the Biological Opinion into their INRMP. At that time, Camp Pendleton's INRMP will provide further benefits to *B. filifolia.*

Relationship of Critical Habitat to Approved and Pending 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 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. 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.

Under section 4(b)(2) of the Act, we are excluding critical habitat from approximately 4,883 ac (1,976 ha) of non-Federal lands within approved or pending HCPs. We are excluding non-Federal lands from critical habitat within the approved (1) Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) (3062 ac, 1239 ha); (2) Villages of La Costa Habitat Conservation Plan (HCP) (208 ac, 84 ha); and (3) Northwestern San Diego County Multiple Habitat Conservation Program (MHCP): City of Carlsbad Subarea Plan/Habitat Management Plan (City of Carlsbad HMP) (414 ac, 168 ha). We are also excluding non-Federal lands from critical habitat within two pending HCPs, the (4) City of Oceanside HMP, also a Subarea Plan under the Northwestern San Diego County MHCP (41 ac, 17 ha) and (5) Orange County Southern Subregion Natural Communities Conservation Plan (NCCP)/HCP) (1,158 ac, 468 ha). Table 4 below provides a list of the exemptions and exclusions in this rule. We have determined that the benefits of excluding areas within these legally operative and pending HCPs from final critical habitat designation outweigh the benefits of including them in critical habitat.

TABLE 4.—ACREAGE OF HABITAT CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF THE SPECIES, AREAS EXCLUDED OR EXEMPTED FROM CRITICAL HABITAT, AND DESIGNATED CRITICAL HABITAT (ACRES (AC); HECTARES (HA)) FOR BRODIAEA FILIFOLIA

Total habitat containing features essential to the conservation of *Brodiaea filifolia*	6,397 ac. 2,589 ha.
Habitat excluded from the final critical habitat designation under section 4(b)(2) of the Act:	
Western Riverside County Multiple Species Habitat Conservation Plan (Riverside County)	3,062 ac. 1,239 ha.
Villages of La Costa Habitat Conservation Plan (San Diego County)	208 ac. 84 ha.
City of Carlsbad Habitat Management Plan (San Diego County)	414 ac. 368 ha.
Pending City of Oceanside Subarea Plan (San Diego County)	41 ac. 17 ha.
Pending Orange County Southern Subregion Natural Community Conservation Plan/Habitat Conservation Plan (Orange County).	1,158 ac. 469 ha.
Habitat exempted from critical habitat designation under section 4(a)(3) of the Act: Marine Corps Base, Camp Pendleton (San Diego County).	917 ac. 371 ha.
Total habitat containing features essential to the conservation of *Brodiaea filifolia* excluded or exempted from final critical habitat.	5,800 ac. 2,347 ha.
Total habitat containing features essential to the conservation of *Brodiaea filifolia* designated as final critical habitat	597 ac. 242 ha.

Brodiaea filifolia is a covered species under the approved Western Riverside County MSHCP, the Villages of La Costa HCP, and the City of Carlsbad HMP and, as such, receives protection and management of features essential for the

species' conservation. We issued the section 10(a)(1)(B) permit for the Western Riverside County MSHCP on June 22, 2005; the Villages of La Costa HCP on June 7, 1995; and the City of Carlsbad HMP on November 9, 2004. Significant conservation of *B. filifolia* is also identified and committed to under a pending HMP for the City of Oceanside and for the Orange County Southern Subregion NCCP/HCP through a signed Settlement Agreement for the Ranch Plan, a comprehensive land use and open space plan that is a component of the draft Orange County Southern Subregion NCCP/HCP, addressing lands owned by the County of Orange and lands owned by Rancho Mission Viejo. The Settlement Agreement was signed on August 16, 2005. These approved and legally operative HCPs, the pending City of Oceanside HMP, and the pending Orange County Southern Subregion NCCP/HCP and associated Settlement Agreement provide special management and protection for the physical and biological features essential for the conservation of *B. filifolia* 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 areas 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 *B. filifolia.*

Below we first provide general background information on each approved or pending HCP, followed by an analysis pursuant to section 4(b)(2) of the Act of the benefits of including lands in all five areas within the critical habitat designation, an analysis of the benefits of excluding these lands from the designation, 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 lands within these approved and pending HCPs will not result in the extinction of *Brodiaea filifolia.*

Western Riverside County Multiple Species Habitat Conservation Plan

We excluded 3,062 ac (1,239 ha) of non-Federal lands within the Western Riverside County MSHCP under section 4(b)(2) of the Act. The Western Riverside County MSHCP was finalized and approved on June 22, 2004. Participants in this HCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; the California Department of Parks and Recreation; and CALTRANS (Riverside County *et al.*). The Western Riverside County MSHCP is a subregional plan under the State's NCCP Act of 2001 and was developed in cooperation with the California Department of Fish and Game (CDFG).

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. Within the 1.26-million ac (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are being conserved. The conservation of 153,000 ac (62,000 ha) complements approximately 347,000 ac (140,431 ha) of other existing natural and open space areas that are already conserved through other means (*e.g.*, State parks, USFS, and County park lands). These lands together will form an overall 500,000-ac MSHCP Conservation Area.

The MSHCP Plan Area includes a portion of the range of *Brodiaea filifolia*, which is a covered species under this NCCP/HCP. The Service concluded that the MSHCP would not jeopardize the continued existence of *B. filifolia* in its Biological and Conference Opinion (Service 2004).

The MSHCP identifies the following specific conservation goals that will be implemented for the long-term conservation of *Brodiaea filifolia*: (1) To include within the MSHCP Conservation Area at least 6,900 ac (2,792 ha) of grassland and playa/vernal pool habitat within the San Jacinto River, Mystic Lake and Salt Creek areas that include the 3,062 ac of land that containing features essential to the conservation of the species, including occurrences of *B. filifolia* identified in the proposed rule; (2) to include within the MSHCP Conservation Area at least 11 major locations supporting *B. filifolia* in two core areas along the San Jacinto River and on the Santa Rosa Plateau, including occurrences identified in the proposed rule as significant; (3) to conduct surveys for the species in certain areas of suitable habitat until the conservation goals are met; and (4) to include within the MSHCP Conservation Area the floodplain along the San Jacinto River consistent with objective 1 and to maintain floodplain processes along the San Jacinto River. In addition, the MSHCP requires surveys to be conducted for *B. filifolia* within the MSHCP Conservation Area at least every 8 years to verify occupancy at a minimum 75 percent of the known locations. Management measures will be triggered, as appropriate, if a decline in species distribution is documented below this threshold. Other management actions will help maintain habitat and populations of *B. filifolia* by preventing alteration of hydrology and floodplain dynamics, off-road vehicle use, grazing, and competition from non-native plants.

Occurrences of *Brodiaea filifolia* are frequently associated with or near vernal pool complexes. The Western Riverside County MSHCP provides for special protection of vernal pool complexes and associated species through its *Protection of Species Associated with Riparian/Riverine areas and Vernal Pools* policy. Implementation of this policy will assist in providing protection to this species' essential habitat by avoiding and minimizing direct impacts to vernal pools and associated habitats. In addition, *B. filifolia* is considered an *Additional Survey Needs and Procedures* species under the MSHCP. Under this policy, surveys for *B. filifolia* will be conducted where suitable habitat is present in identified species survey areas until such time as the conservation objectives for this species are met. Finally, the MSHCP's *Guidelines Pertaining to the Urban/Wildlands Interface* provides some assurance that future urbanization will maintain the existing water quality and quantity needed to maintain floodplain areas and vernal pools supporting *B. filifolia* along the San Jacinto River and at upper Salt Creek west of Hemet. Thus, the Western Riverside County MSHCP provides significant conservation benefits to *B. filifolia*, including an MSHCP Conservation Area that protects core habitat areas and known occurrences, long-term management and monitoring of the preserve area, and special guidelines, policies, and survey requirements to ensure that significant occurrences of *B. filifolia* and its essential habitat are protected under the plan.

The Villages of La Costa Habitat Conservation Plan—San Diego County

We excluded 208 ac (84 ha) of non-Federal lands within the Villages of La Costa HCP under section 4(b)(2) of the Act. Under this HCP, Fieldstone/La Costa Associates proposed to construct housing, limited commercial development, a school, a park, and various roadways on 1,252 ac (507 ha) of the 1,955 ac (791ha) property at two locations within the City of Carlsbad. All *Brodiaea filifolia* on the site

occurred in the northwest parcel and was estimated to consist of 7,000 individuals. The project was permitted to directly impact 1,190 individuals (17 percent). As part of the HCP and section 10(a)(1)(B) permit, the following conservation measures were required and have been implemented for the long-term conservation of *B. filifolia*: (1) Permanent protection of approximately 5,800 individuals (83 percent) in a 702.5–ac (284 ha) natural open space preserve configured to provide connectivity to other significant areas of natural habitat; (2) long-term management of conserved habitat; (3) monitoring; (4) habitat restoration and enhancement; (5) control of invasive plant species; (6) implementation of a fire management program; (7) access control measures; and (8) public education. The 702.5 ac preserve area contains the significant occurrence of *B. filifolia* identified in the proposed rule. Open space areas on Fieldstone/La Costa Associates lands are actively managed to maintain and enhance biological values by the Center for Natural Lands Management (Don Rideout, City of Carlsbad, pers. comm. 2004). In the Service's 1995 Biological and Conference opinion for this HCP, we found that the issuance of the incidental take permit and execution of the Implementing Agreement were not likely to jeopardize the continued existence of *B. filifolia* (Service 1995). We determined that impacts to this species and its habitat, when viewed in conjunction with the conservation measures required under the HCP and Implementing Agreement that will provide long-term benefits to *B. filifolia*, were not anticipated to result in an appreciable reduction in the numbers, reproduction, or distribution of this species throughout its range.

City of Carlsbad Habitat Management Plan—San Diego County

We excluded approximately 414 ac (168 ha) of non-Federal lands within the City of Carlsbad HMP under section 4(b)(2) of the Act. The City of Carlsbad HMP is a subarea plan under the Northwestern San Diego County MHCP. The MHCP is a comprehensive, multi-jurisdictional planning program designed to create, manage, and monitor an ecosystem preserve in northwestern San Diego County. The MHCP preserve system is intended to protect viable populations of native plant and animal species and their habitats in perpetuity, while accommodating continued economic development and quality of life for residents of North 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 (USFWS and SANDAG 2003).

The 10(a)(1)(B) permit for the City of Carlsbad HMP was issued on November 9, 2004, and the City was the first of the seven participating cities to receive a permit on their subarea plan. *Brodiaea filifolia* is a conditionally covered species under the HMP. Occurrences of *B. filifolia* exist within the boundaries of the HMP in the following identified areas: Calavera Heights, Lake Calavera, Fox-Miller, Carlsbad Oaks North, and Poinsettia. Under the HMP, all known populations of *B. filifolia* within existing preserve areas will be conserved at 100 percent. All *B. filifolia* outside of already preserved areas are required to be consistent with the MHCP's narrow endemic policy which requires mitigation for unavoidable impacts and management practices designed to achieve no net loss of narrow endemic populations, occupied acreage, or population viability within Focused Planning Areas. In addition, cities cannot permit more than 5 percent gross cumulative loss of narrow endemic populations or occupied acreage within the Focused Planning Areas, and no more than 20 percent cumulative loss of narrow endemic locations, population numbers or occupied acreage outside of Focused Planning Areas (AMEC Earth and Environmental, Inc. 2003). All conserved populations of *B. filifolia* will be incorporated into the preserve areas of the HMP. Additionally, the HMP includes provisions to manage the populations within the preserve areas in order to provide for the long-term conservation of the species.

Occurrences of *Brodiaea filifolia* at Calavera Heights, Lake Calavera, Carlsbad Oaks North, and Poinsettia covered under the HMP were excluded from proposed critical habitat. However, occurrences on the Fox-Miller property were not excluded from the proposed designation because initially, the proposed hard-lined reserve on Fox-Miller did not meet the conditions for coverage of the species under the HMP. The property owners worked with the Service, CDFG, and the City of Carlsbad to develop a project that meets the HMP's standards for *B. filifolia* conservation. Ninety-five percent of the 19,100 plants on the property will be conserved. The site's preserve will be incorporated into the HMP's preserve system, partially restored to native grassland, and managed to sustain both the native grassland community and the population of *B. filifolia.* With modification of this hard-lined reserve and associated restoration and management actions, the City of Carlsbad will receive full coverage for B. filifolia. In our biological opinion for the issuance of the section 10(a)(1)(B) permit to the City of Carlsbad, we determined that the proposed action would not jeopardize the continued existence of *B. filifolia.* The preserve area includes the significant occurrence of *B. filifolia* identified in the proposed rule. Thus, we are excluding the Fox-Miller property (subunit 7a) in this final rule.

City of Oceanside HMP—San Diego County

We excluded approximately 41 ac (17 ha) of non-Federal lands in two subunits within the City of Oceanside under section 4(b)(2) of the Act. The City of Oceanside has accepted and committed to the conservation standards for *Brodiaea filifolia* established under the Northwestern San Diego MHCP. These conservation standards will be included in the City of Oceanside's HMP, currently in development.

Subunit 6b (Mesa Drive) consists of 5 ac (2 ha) of primarily grasslands supporting an occurrence of *Brodiaea filifolia* estimated to contain 2,800 plants (Roberts in litt. 2004). The site is under the control of a home owner's association and includes a San Diego Gas & Electric utility easement. There are currently no development plans for the site, but under the conservation standards of the overarching, Northwestern San Diego County MHCP and agreed to by the City, no more than 20 percent of this population may be impacted.

Subunit 6d (Taylor/Darwin) contains several properties under different ownership. The Taylor Estates property had 1,268 flowering *Brodiaea filifolia* plants identified in 2001. Seventy-one of these plants in the direct development footprint of the project were translocated elsewhere on the Taylor Estates property. These translocated individuals and the remaining plants will be managed and monitored in perpetuity. The Darwin portion of the subunit has also been partially developed. Approximately 6 ac (2 ha) of open space, which includes an occurrence of *B. filifolia*, has been preserved and will be managed in perpetuity. Thirty-six ac (15 ha) of extant valley and foothills grassland supporting a major population of *B. filifolia*, as defined by the MHCP, remain within the subunit. Under the conservation standards of the MHCP and agreed to by the City, 95 percent of this population will be preserved and managed within the preserve system.

The preserve area includes the significant occurrence of *B. filifolia* identified in the proposed rule.

Orange County Southern Subregion NCCP/HCP

We excluded approximately 1,158 ac (469 ha) of non-Federal lands in three subunits within the Southern Subregion of Orange County under section 4(b)(2) of the Act.

Rancho Mission Viejo, the County of Orange, the Endangered Habitats League, the Natural Resources Defense Council, Inc., Sea and Sage Audubon Society, Laguna Greenbelt, Inc., and the Sierra Club reached an agreement on August 16, 2005, to settle a lawsuit challenging the November 2004, approval for a General Plan Amendment, Zone Change and Development Agreement issued by the County of Orange for Rancho Mission Viejo's Ranch Plan, a comprehensive land use and open space plan for the remaining 22,815 acres of undeveloped land owned by Rancho Mission Viejo, in Orange County. Rancho Mission Viejo's Ranch Plan is integral to the pending Orange County Southern Subregion NCCP/HCP, currently in development.

We are excluding from critical habitat designation a total of approximately 899 ac (364 ha) of land owned by Rancho Mission Viejo in subunits 4c (Cañada Gobernadora/Chiquita Ridgeline) and 4g (Cristianitos Canyon). Conservation identified in the Settlement Agreement assures that significant occurrences of *Brodiaea filifolia* will be preserved, including a major occurrence of over 4,000 plants in subunit 4c. Within subunit 4c, only small occurrences (generally less than 100 plants) are slated for development. Subunit 4g (Cristianitos Canyon) is primarily conserved as open space under the Settlement Agreement. Rancho Mission Viejo is allowed to establish and maintain 50 ac (20 ha) of orchards in this subunit in areas that may impact some small occurrences of *Brodiaea filifolia*. The orchards will be consistent with the location of, or criteria for location of, the orchards established by an approved NCCP or, in the absence of an approved NCCP, located to avoid sensitive species and habitats. The Settlement Agreement also calls for the establishment of a long-term funding program for management and oversight of all defined open space areas placed under conservation easements.

We are also excluding approximately 259 ac (105 ha) within subunit 4b (Casper's Wilderness Park) in the City of San Juan Capistrano under 4(b)(2) of the Act. Lands within this unit support an occurrence of *Brodiaea filifolia* of about 850 plants. The occurrence is protected from urban development and managed by the County of Orange's Division of Harbors, Beaches and Parks. The County of Orange is a landowner within and a major sponsor of the Southern Subregion NCCP/HCP. Thus, the major occurrences of *B. filifolia* (*i.e.*, those with greater than 850 plants) encompassed within the 1158 acres of essential habitat identified in the proposed rule are protected and included within the planning area boundary of the draft HCP or committed for conservation under the Settlement Agreement.

The following analysis considers all five plans discussed above: (1) The Western Riverside County MSHCP; (2) the Villages of La Costa HCP; (3) the City of Carlsbad HMP; (4) the City of Oceanside HMP (pending); and (5) the Orange County Southern Subregion NCCP/HCP (pending).

(1) Benefits of Inclusion

Overall, we believe that there is minimal benefit from designating critical habitat for *Brodiaea filifolia* within the Western Riverside County MSHCP, the Villages of La Costa HCP, the City of Carlsbad NCCP/HCP, the City of Oceanside HMP (pending), and the Orange County Southern Subregion NCCP/HCP (pending) because, as explained above, almost all of the significant occurrences of *B. filifolia* are already protected and managed or will be protected and managed for the long-term conservation of the species. Below we discuss benefits of inclusion of these 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 *Brodiaea filifolia* 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 *B. filifolia*. 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 4,883 ac (1,976 ha) of non-Federal lands 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 4,883 ac (1,976 ha) of non-Federal lands would likely consider the conservation value of these lands as identified in the approved and pending HCPs and the Settlement Agreement and take the necessary steps to avoid jeopardy or the destruction or adverse modification of critical habitat.

The areas excluded as critical habitat include vegetation communities supporting *Brodiaea filifolia* and an area 820 ft (250 m) around each occurrence to provide for pollinator movement and habitat. 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 the ''Effects of Critical Habitat Designation'' section. However, inasmuch as portions of these areas currently support *B. filifolia,* consultation for Federal activities which might adversely impact the species would be required even without the critical habitat designation. For the surrounding areas that may lack individual plants (*i.e.*, areas not occupied by *B. filifolia*), the Federal action agency would need to determine if the proposed action would affect the species rather than determining whether 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 areas not occupied by *B. filifolia* 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. However, approved and pending HCPs because almost all of the significant occurrences of *B. filifolia* are protected and managed or will be protected and managed for the long-term benefit of the species. Thus,

the approved and draft HCPs provide or will provide a greater level of protection and management for *B. filifolia* than the simple avoidance of adverse effects to critical habitat.

If these areas were included as critical habitat, primary constituent elements would be protected from destruction or adverse modification by Federal actions using a conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot.* This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the species' continued existence. However, for those areas supporting *Brodiaea filifolia*, consultation for activities which may adversely affect the species would be required, even without the critical habitat designation.

In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat 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 *Brodiaea filifolia* by the public outreach and environmental impact reviews required under the National Environmental Policy Act (NEPA) for the Western Riverside County MSHCP, the Villages of La Costa HCP, the Northwestern San Diego County MHCP, and the City of Carlsbad HMP and the recognition by the County of Riverside *et al.*, Fieldstone/La Costa Associates, the City of Carlsbad, the City of Oceanside, the County of Orange, and Rancho Mission Viejo of the presence of *B. filifolia* and the value of their lands for the conservation and recovery of the species. 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.

Similarly, while the Settlement Agreement was not open to public comment, it results from an application requesting a General Plan Amendment, Zone Change and Approval of a Development Agreement that was subject to extensive public review through circulation of an Environmental Impact Report under CEQA. A major commitment to the conservation presented in the Settlement Agreement has been made public through media outreach. In addition, the Settlement Agreement and revisions made to the Ranch Plan Development Agreement are now being incorporated into the draft documents for the Orange County Southern Subregion NCCP/HCP. The planning process for this regional NCCP/HCP has been ongoing for several years and has included significant scoping and planning workshops with opportunity for public comment. The Settlement Agreement has now provided the impetus for the County of Orange, local jurisdictions, and Rancho Mission Viejo to complete the Southern Subregion NCCP/HCP. While the Draft HCP/EIS has not yet been released for public review, major portions of the document, including the conservation analysis sections are complete, and the Service and the CDFG are coordinating efforts to review the document. Thus, the Settlement Agreement and status of the preliminary Draft HCP/EIS provide us with reasonable assurance that this significant regional plan will be completed.

The pending City of Oceanside HMP has a similar status to the Orange County Southern Subregion NCCP/HCP, in that a conservation strategy for *Brodiaea filifolia* has been agreed to and the planning documents, while not yet released for public review, are well underway. In addition, the Oceanside HMP is a Subarea Plan under the MHCP, which underwent public review through a joint CEQA/NEPA process; based on this, and the cooperation and efforts of the City of Oceanside to support the goals of the overarching MHCP, we have reasonable assurance that the City of Oceanside HMP will be completed.

In addition there has been public notice and opportunity for comment on this proposal, which identified lands eligible for designation as critical habitat, and the economic analysis for the proposal, which also identified those lands. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat.

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 Western Riverside County MSHCP, the Villages of La Costa HCP, the City of Carlsbad HMP, the pending City of Oceanside HMP, and the pending Orange County Southern Subregion NCCP/HCP and associated Settlement Agreement provide for the conservation of *Brodiaea filifolia* through avoidance, minimization, and/or mitigation of impacts, management of habitat, and maintenance of watershed. These HCPs and the Settlement Agreement provide or will provide for protection of the PCEs for *B. filifolia* and address special management needs such as maintenance of clay soils and hydrology. Designation of critical habitat would therefore not provide as great a benefit to the species as the positive management measures in these HCPs and the Settlement Agreement.

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, such as the Orange County Southern Subregion NCCP/HCP, 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 are 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.

The signed Settlement Agreement represents a similar commitment to the conservation of *Brodiaea filifolia* as would be found in Draft NCCP/HCP documents. The Settlement Agreement is integral to completion of the Orange County Southern Subregion NCCP/HCP. We believe designating critical habitat within the area covered by the signed Settlement Agreement would be viewed as a disincentive. Similarly, designating critical habitat within park lands designated as wilderness and owned and managed by the County of Orange, a major sponsor of the Orange County Southern Subregion NCCP/HCP, would be viewed as a disincentive to completing their regional plan.

Another benefit from excluding these lands is to maintain the partnerships developed during the planning phase through the implementing phases of the HCPs. 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 within the HCP plan areas that may affect listed species would still require consultation under section 7 of the Act. HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because 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 an HCP provides. The development and implementation of 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.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the exclusion of critical habitat for *Brodiaea filifolia* from approximately 4,883 ac (1,976 ha) of non-Federal lands within the approved Western Riverside County MSHCP, the Villages of La Costa HCP, and the City of Carlsbad HMP, and the pending City of Oceanside HMP and pending Orange County Southern Subregion NCCP/HCP with its associated Settlement Agreement. 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 *Brodiaea filifolia* within these lands 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 including these 4,883 ac (1,976 ha) of non-Federal lands as critical habitat are lessened because of the significant level of conservation provided to *B. filifolia* under the approved Western Riverside County MSHCP, the Villages of La Costa HCP, and the City of Carlsbad HMP; the pending City of Oceanside HMP; and the pending Orange County Southern Subregion NCCP/HCP and associated Settlement Agreement (conservation of occupied and potential habitat, monitoring, and maintenance of soils and hydrology). In contrast, the benefits of excluding these 4,883 ac (1,976 ha) of non-Federal lands as critical habitat are increased because of the high level of cooperation by the County of Riverside *et al.*, Fieldstone/La Costa Associates, the City of Carlsbad, the City of Oceanside, the County of Orange, Rancho Mission Viejo, the 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 4,883 ac (1,976 ha) of non-Federal lands will not result in extinction of *Brodiaea filifolia* since most of these lands are protected and managed or will be protected and managed for the benefit of this species pursuant to the approved Western Riverside County MSHCP, the Villages of La Costa HCP, and the City of Carlsbad HMP; the pending City of Oceanside HMP; and the pending Orange County Southern Subregion NCCP/HCP and the associated Settlement Agreement. These approved and pending HCPs and the Settlement Agreement include specific conservation objectives, avoidance and minimization measures, and management that exceed any conservation value provided as a result of a critical habitat designation.

Some small occurrences of *Brodiaea filifolia* within approximately 311 ac (ha) of privately owned lands in subunit 4c (Gobernadora/Chiquita Ridgeline) are proposed for development as part of Rancho Mission Viejo's development plan. These lands are covered by the signed Settlement Agreement. Any Federal Agency authorizing an action to develop these lands (*e.g.*, USCOE) would likely consider the conservation actions in the Settlement Agreement as appropriate mitigation for loss of *B. filifolia* habitat. We believe the loss of these small occurrences of this species is not likely to result in extinction of the species). Likewise, the approximately 588 acres (238 ha) of privately owned lands containing features essential to the conservation of *B. filifolia* in subunit 4g (Cristianitos Canyon) will be protected and managed by Rancho

Mission Viejo as stipulated in the Settlement Agreement. This level of protection will occur as a result of the Settlement Agreement and thus regardless of whether these lands are excluded as critical habitat. The occurrence of *B. filifolia* in subunit 4b (Casper's Wilderness Park) is protected and is within the pending Orange County Southern Subregion NCCP/HCP plan boundary. Thus, we believe that exclusion of this occurrence as critical habitat will not result in extinction of the species.

In our Biological and Conference Opinions for the issuance of a section 10(a)(1)(B) permit for the Western Riverside County MSHCP, the Villages of La Costa HCP, and the City of Carlsbad HMP, the Service concluded that the proposed permit issuances would not appreciably reduce the likelihood of the survival and recovery of *Brodiaea filifolia* because of the avoidance and minimization measures, long-term management, and commitment to a preserve system. 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 *B. filifolia* 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 major occurrences of *Brodiaea filifolia* within the Western Riverside County MSHCP, the Villages of La Costa HCP, the City of Carlsbad HMP, and the pending Oceanside HMP and within lands covered by the Settlement Agreement and within Casper's Wilderness Park are or will be 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 4,883 ac (1,976 ha) within lands owned by the County of Orange and Rancho Mission Viejo and within the Western Riverside County MSHCP, the Villages of La Costa HCP, the City of Carlsbad HMP, and the pending City of Oceanside HMP will not result in extinction of *B. filifolia.*

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 publication of the proposed critical habitat rule, an analysis of the economic impacts of proposed critical habitat for *Brodiaea filifolia* was prepared. The notice of availability (NOA) of a draft economic analysis (DEA) was announced in the **Federal Register** on October 6, 2005 (70 FR 58361). Copies of the draft economic analysis were available for downloading from the Internet at *http://carlsbad.fws.gov*, or by contacting the Carlsbad Fish and Wildlife Office directly. In the NOA, we announced the reopening of the comment period on proposed critical habitat and solicited public review and comment. We accepted comments until October 20, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Brodiaea filifolia.* 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. The 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 *Brodiaea filifolia* 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 *Brodiaea filifolia*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Brodiaea filifolia* was listed as threatened (63 FR 54975; October 13, 1998), but prior to the designation of critical habitat. Total pre-designation costs associated with lands proposed as critical habitat are estimated to be $2.9 million to $3.0 million on a present value basis and $2.4 million to $2.5 million expressed in undiscounted dollars. Pre-designation costs associated with areas excluded from the proposed designation are estimated to be $110,000 to $180,000 on a present value basis and $100,000 to $150,000 expressed in undiscounted dollars.

Post-designation effects would include likely future costs associated with *Brodiaea filifolia* conservation efforts in the 20-year period following the final designation of critical habitat (effectively 2005 through 2024). If critical habitat were designated as proposed, total costs were estimated to be $12.2 million to $14.7 million on a present value basis and $12.2 million to $16.9 million expressed in undiscounted dollars (an annualized cost of $0.6 to $0.8 million annually). If all habitat with features essential to the conservation of the species were designated critical habitat in this final rule, total costs would be expected to range between $24.5 and $43.6 million over the next 20 years (an annualized cost of $1.2 to $2.2 million). However, due to significant reductions made to critical habitat in this final rule (see ''Summary of Changes from Proposed Rule''), the estimated costs for the units actually designated are estimated to range between $1.0 and $3.3 million over the next 20 years expressed in undiscounted dollars.

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 $24.5 million to $43.6 million over the nest 20 years (an annualized cost of $1.2 million to $2.2 million), 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 review the proposed rule.

The availability of the draft economic analysis was announced in the **Federal Register** on October 6, 2005 (70 FR 58361), and was made available for public review and comment.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this rule to designate critical habitat for *Brodiaea filifolia* 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.

The designation of critical habitat requires Federal agencies to consult with us if activities they authorize, fund, or carry out 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 *Brodiaea filifolia* 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 draft economic analysis of this 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. Of these potentially affected activities, impacts to small entities are not anticipated for the following reasons: 1. Military lands management: The analysis predicts that the Department of Defense (DoD), which manages Marine Corps Base Camp Pendleton (EH units 15 to 19), will experience administrative and project modification costs associated with *Brodiaea filifolia* conservation activities. DoD does not meet SBA's definition of a small government. 2. Transportation, utilities, and flood control: The analysis estimates that additional project modification costs associated with *B. filifolia* conservation activities are likely for transportation project undertaken by CALTRANS, the Transportation Corridor Agencies (TCA), and the Riverside County Transportation Commission, utility projects undertaken by San Diego Gas & Electric, and the San Jacinto River Flood Control Project of the Riverside County Flood Control and Water Conservation District. None of these five entities are small businesses or governments as defined by SBA and, therefore, are not considered further in this screening analysis. 3. Public and conservancy lands management: The United States Forest Service manages Cleveland National Forest; Orange County's Department of Harbors, Beaches and Parks manages Aliso-Wood Canyon Regional Park and Casper's Regional Park; and the Glendora Community Conservancy manages the Conservancy of the same name. With the exception of the Glendora Community Conservancy, these entities exceed the threshold established for small governments (service population of 50,000 or less). Accordingly, this screening analysis focuses on economic impacts related to residential development and the management of Glendora Community Conservancy.

The final 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 Los Angeles, Orange, 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.

The DEA (See Section 3.2.1) estimates that 390 acres within areas originally proposed for critical habitat designation are projected to be developed over the next 20 years. The analysis assumes that as a result of *Brodiaea filifolia* conservation activities, 95 percent of the acres are conserved, and the plant is salvaged from the remaining five percent. As a result, landowners of 100 percent of these acres bear costs of *B. filifolia* conservation activities.

To estimate the number of landowners potentially impacted by *B. filifolia* conservation activities, the analysis estimates the average parcel size within proposed units/subunits in each county that contains habitat with features essential to the conservation of the species and compares it to the

estimate of affected acres in these areas. At the aggregate county level, in units proposed for inclusion, one individual may be impacted in Los Angeles County, one individual may be impacted in San Bernardino County, 22 individuals may be impacted in Orange County, and 27 individuals may be impacted in San Diego County. Note that this estimate may be understated if habitat partially overlaps several parcels or overstated if one person owns more than one parcel with *B. filifolia*.

The loss in land value experienced by an individual landowner will depend on how much of a parcel is inhabited by *Brodiaea filifolia*, the extent to which development activities can be planned around sensitive areas, and the existence of alternative uses of the property that do not threaten the plant or its habitat. For example, if *B. filifolia* exist on only a small portion of the parcel that can be incorporated into existing open space requirements, then a small percentage of the land value is lost. However, if *B. filifolia* are found throughout the parcel, most or all of development value of that parcel may be lost. In such a circumstance, the parcel may continue to derive value from other, nondevelopment-oriented uses.

Effects on Homebuyers and Small Construction Firms

The DEA (See Section 3.2.2) estimates a potential shift in the supply of housing resulting from increased land scarcity. Scenario Two assumes that as a result of on-site conservation requirements, less land is available for development, and therefore fewer new homes are built. Under this scenario, small construction firms may be indirectly affected. This analysis uses a methodology used by Charles River Associates (CRA) to estimate the potential impact to small construction firms. The analysis uses the following steps to estimate the number of firms potentially affected:

(1) The analysis estimates the number of new homes typically built by a small construction firm in one year. Average annual revenues for a small construction firms are $694,000. Using the average construction costs for a single family home of $236,000 obtained from CRA's vernal pool analysis, a small firm is assumed to build on average three houses a year ($694,000/$236,000 = 2.9).

(2) Next, the analysis estimates the number of homes that would have been built by small businesses in the absence of *Brodiaea filifolia* conservation efforts. As described in Section 3.2.2 of the DEA, the analysis predicts 316 homes will not be built in cities with habitat proposed for designation (summarized in Exhibit A–2 of the DEA). In an analysis of building permits in Sacramento County conducted by CRA, researchers determined that 22 percent of permits for single family dwellings were requested by small businesses. This analysis assumes that a similar proportion of new home construction activity is conducted by small construction firms in the five Southern California counties included in this analysis. As shown in Exhibit A–2 of the DEA, multiplying 22 percent by the number of homes not built in each county provides an estimate of lost home construction for small firms.

(3) Next, using the number of homes not built by small firms, the analysis estimates the number of small businesses affected. Results of this calculation are presented in Exhibit A–2. At the high-end, assuming that each lost house would have been built by a separate firm, the number of firms potentially affected is equal to the number of lost homes. For a low-end estimate, the number of houses not built is divided by the average number of houses built per year by small firms (three houses). In summary, in a given municipality containing critical habitat, between one and 18 small construction firms may be affected annually by *Brodiaea filifolia* conservation activities. In Hemet, Moreno Valley, and Perris, where habitat is excluded from critical habitat, approximately nine to 82 small firms could be affected if habitat were designated. The impact to affected small businesses is estimated to be between one-third and all of their revenues for the year, depending on the estimate of the number of businesses affected. Note that the impact to small construction firms may be overstated. As discussed in Section 3 of the DEA, the analysis of lost housing units is partial equilibrium in nature (e.g., does not consider substitution of displaced development to other nearby areas), which is consistent with the best currently available empirical information. If, instead, homes not built in these municipalities are constructed in neighboring communities unaffected by *B. filifolia* conservation activities, the impact to small construction firms is likely to be less than presented in Exhibit A–2. As a result, impacts to these firms are more likely overstated than understated in this analysis.

Based on these data, we have determined that this designation will not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties. 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 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 the 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) The U.S. Forest Service manages Angeles National Forest and Cleveland National Forest (subunits 1b, 5a and 5b); Orange County's Department of Harbors, Beaches and Parks manages Aliso and Woods Canyon Regional Park (unit 3) and Casper Wilderness Park (unit 4); and the Glendora Community Conservancy manages the Conservancy (subunit 1a) of the same name. With the exception of the Glendora Community Conservancy, these entities exceed the threshold established for small governments (service population of 50,000 or less). Therefore, the Glendora Community Conservancy is the only land manager considered in this screening analysis.

The DEA (See Section 6) estimates potential costs to public and private land management entities. Of the entities analyzed, the Glendora Community Conservancy is the only small entity. This section estimates potential impacts of *Brodiaea filifolia* conservation activities to the Conservancy.

The Conservancy's overall annual budget ranges from $15,000 to $30,000 and includes such elements as insurance, discounted land taxes, weed abatement, and trail maintenance. The analysis estimates that potential future costs associated with *Brodiaea filifolia* conservation activities at the Conservancy may range from $1,600 to $2,600 on an annualized basis (assuming a seven percent discount rate). These costs represent approximately 11 percent to 17 percent of annual expenditures assuming the low-end estimate of the annual budget ($15,000) and 5 percent to 9 percent assuming the high-end estimate ($30,000). Considering that the Glendora Community Conservancy is in the business of conservation this is not an unexpected expenditure for the Conservancy. Consequently, we do not believe that the designation of critical habitat for *B. filifolia* will significantly or uniquely affect any small governmental entity addressed in the DEA. As such, a Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects and, therefore, a Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from, and coordinated the development of the proposed critical habitat designation with appropriate State resource agencies in California. We anticipate that the designation of critical habitat in the areas currently occupied by *Brodiaea filifolia* will impose no additional significant restrictions beyond those currently in place and, therefore, should have little incremental impact on State and local governments and their activities.

The designation of critical habitat may have some benefit to the State and local resource agencies in that the areas and features essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior=s Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with provisions of the Endangered Species Act. The 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 *Brodiaea filifolia*.

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

This rule does not contain new or revised information collections for which OMB approval is required under the Paperwork Reduction Act. Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned OMB Control No. 1018–0094, which expires September 30, 2007. This includes FWS Forms 3–200–55 and 3–200–56. 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 the 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 *Brodiaea filifolia*. Therefore, critical habitat has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein is available, upon request, from

the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

This rule was prepared by staff at 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, the Service hereby amends 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 in the table for ''*Brodiaea filifolia*'' under ''FLOWERING PLANTS,'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common names						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Brodiaea filifolia	Thread-leaved brodiaea.	U.S.A. (CA)	Liliaceae—Lily	T	650	17.96(a)	NA.
*	*	*	*	*	*		*

■ 3. In § 17.96(a), add critical habitat for *Brodiaea filifolia*, in alphabetical order under Family Liliaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Liliaceae: *Brodiaea filifolia* (Thread-leaved brodiaea)

(1) Critical habitat units are depicted for *Brodiaea filifolia* on the maps below.

(2) The primary constituent elements of critical habitat for *Brodiaea filifolia* consist of the following:

(i) Appropriate soil series and associated vegetation at suitable elevations of either:

(A) Clay soil series of various origins (e.g., Alo, Altamont, Auld, Diablo), clay lenses found as unmapped inclusions in other soil series, or within loamy soils underlain by a clay subsoil (e.g., Fallbrook, Huerhuero, Las Flores) that generally occur on mesas and gentle to moderate slopes, or in association with vernal pools, between the elevations of 100 ft (30 m) and 2,500 ft (765 m) and support open native or annual grassland communities, open coastal sage scrub or coastal sage scrub-chaparral communities; or

(B) Silty loam soil series underlain by a clay subsoil or caliche that are generally poorly drained, moderately to strongly alkaline, granitic in origin (e.g., Domino, Grangeville, Waukena, Willows), that generally occur in low-lying areas and floodplains, often in association with vernal pool or playa complexes, between the elevations of 600 ft (180 m) and 1,800 ft (550 m) and support native, annual, or alkali grassland or scrub communities; or

(C) Clay loam soil series (e.g., Murrieta) underlain by heavy clay loams or clays derived from olivine basalt lava flows, that generally occur on mesas and gentle to moderate slopes between the elevations of 1,700 ft (520 m) and 2,500 ft (765 m) and support native or annual grassland or oak woodland savannah communities associated with basalt vernal pools; or

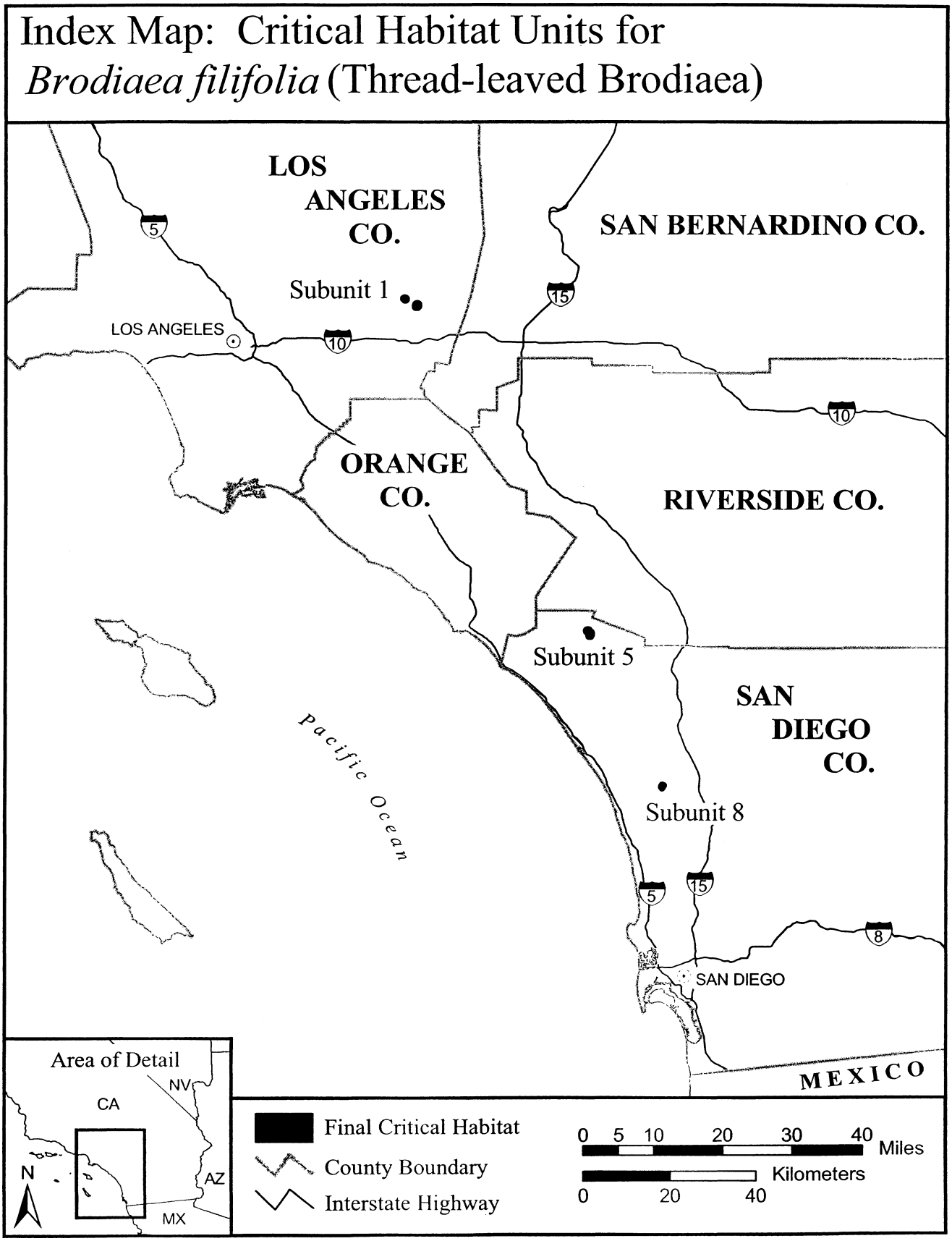
(D) Sandy loam soils derived from basalt and granodiorite parent materials, deposits of gravel, cobble, and boulders, or hydrologically fractured weathered granite in intermittent streams and seeps that support open riparian and freshwater marsh communities associated with intermittent drainages, floodplains, and seeps generally between 1,800 ft (550 m) and 2,500 ft (765 m).

(ii) Areas with an intact surface and subsurface structure not permanently altered by anthropogenic land use activities (e.g., deep, repetitive disking; grading). These features as well as associated physical processes (e.g., full sunlight exposure) are essential to maintain those substrate and vegetation types where *Brodiaea filifolia* is found and to support pollinator assemblages necessary to facilitate gene flow within and among populations of *B. filifolia*.

(iii) Critical habitat does not include existing features and structures, and the land beneath them, such as open water, 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.

(3) Index map of critical habitat units for *Brodiaea filifolia* (Thread-leaved brodiaea) follows:

BILLING CODE 4310–55–P

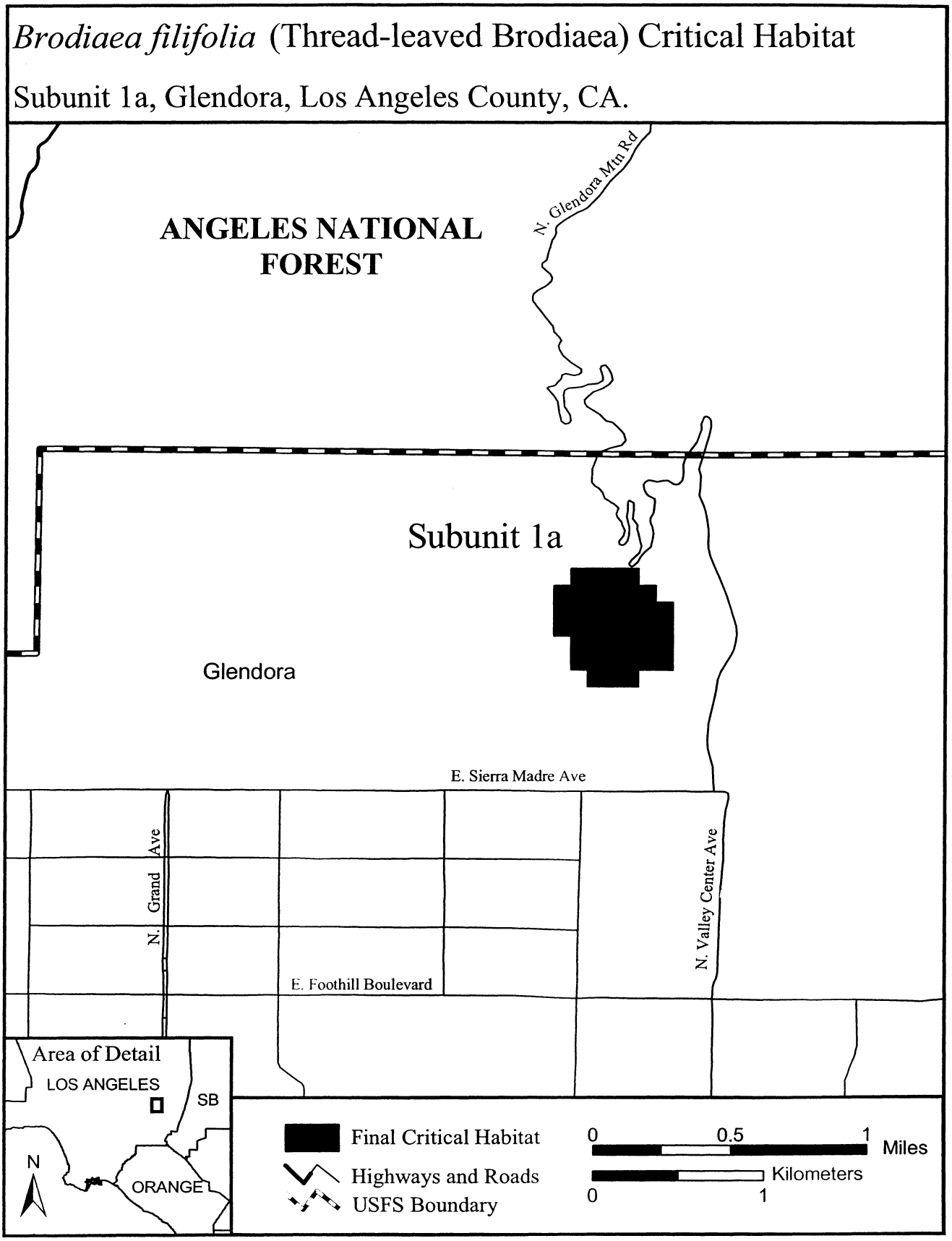

Index Map: Critical Habitat Units for
Brodiaea filifolia (Thread-leaved Brodiaea)
LOS ANGELES CO.
SAN BERNARDINO CO.
Subunit 1
LOS ANGELES
ORANGE CO.
RIVERSIDE CO.
Subunit 5
SAN DIEGO CO.
Pacific Ocean
Subunit 8
SAN DIEGO
MEXICO
Area of Detail
NV
CA
AZ
MX
N
Final Critical Habitat
County Boundary
Interstate Highway
0 5 10 20 30 40 Miles
0 20 40 Kilometers

(4) All map units are in the Universal Transverse Mercator (UTM) coordinate system, North American Datum of 1927 (NAD27) projection.

(5) Map Unit 1: Los Angeles, County, California, from USGS 1:24,000 quadrangle map Glendora California.

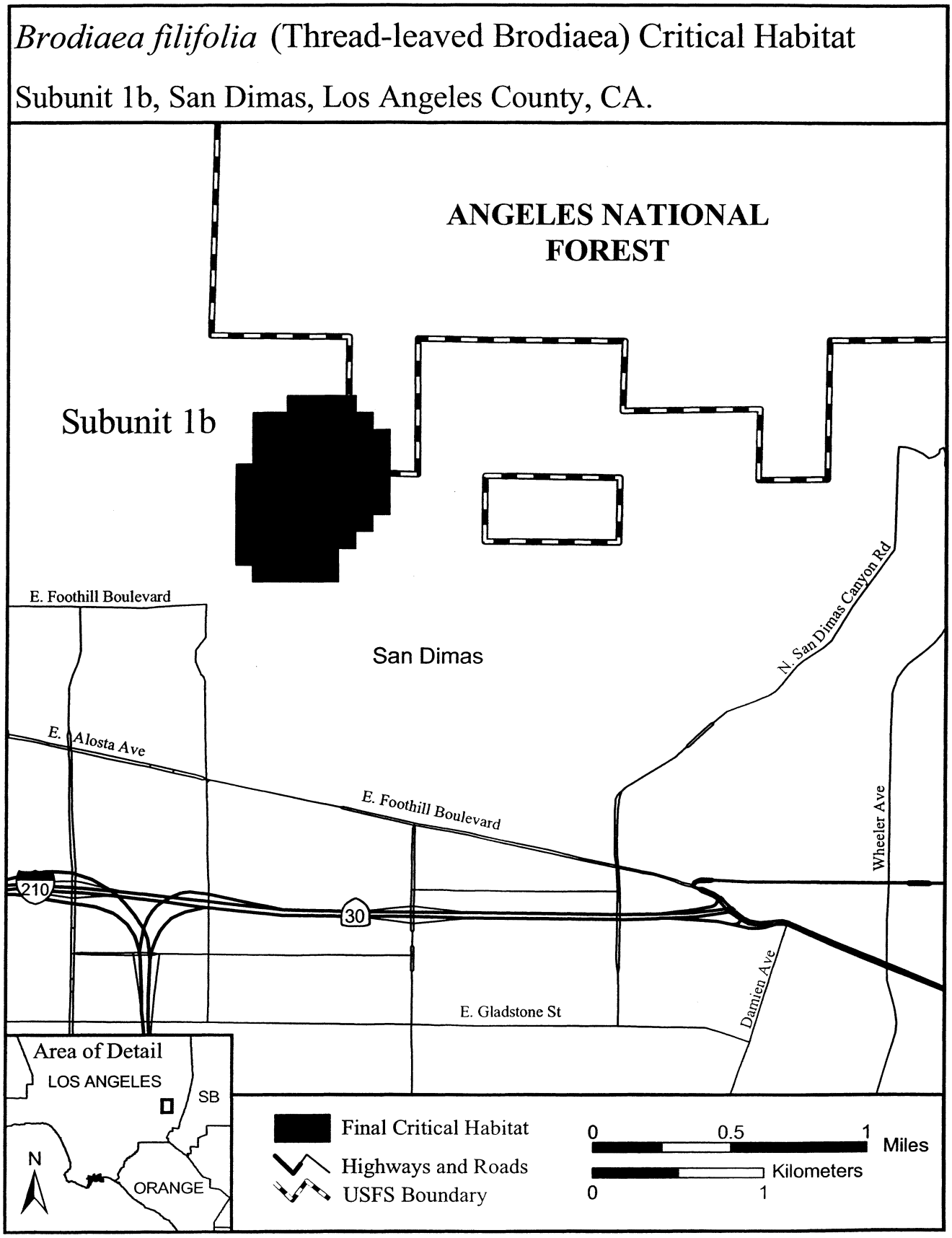
(i) Subunit 1a: Glendora, Los Angeles County, California; land bounded by the following UTM coordinates (E, N): 422400, 3779900; 422400, 3779800; 422500, 3779800; 422500, 3779700; 422600, 3779700; 422600, 3779300; 422400, 3779300; 422400, 3779200; 422100, 3779200; 422100, 3779300; 422000, 3779300; 422000, 3779500; 421900, 3779500; 421900, 3779800; 422000, 3779800; 422000, 3779900; returning to 422400, 3779900.

(ii) Map of critical habitat Subunit 1a for *Brodiaea filifolia* (Thread-leaved brodiaea) follows:


Brodiaea filifolia (Thread-leaved Brodiaea) Critical Habitat
Subunit 1a, Glendora, Los Angeles County, CA.
ANGELES NATIONAL FOREST
N. Glendora Mtn Rd
Subunit 1a
Glendora
E. Sierra Madre Ave
N. Grand Ave
N. Valley Center Ave
E. Foothill Boulevard
Area of Detail
LOS ANGELES
SB
ORANGE
N
Final Critical Habitat
Highways and Roads
USFS Boundary
0
0.5
1
Miles
Kilometers
0
1

(iii) Subunit 1b: San Dimas; land bounded by the following UTM coordinates (E, N): 425300, 3778600; 425300, 3778500; 425400, 3778500; 425400, 3778400; 425500, 3778400; 425500, 3777900; 425400, 3777900; 425400, 3777800; 425300, 3777800; 425300, 3777700; 425200, 3777700; 425200, 3777500; 424700, 3777500; 424700, 3777600; 424600, 3777600; 424600, 3778200; 424700, 3778200; 424700, 3778500; 424900, 3778500; 424900, 3778600; returning to 425300, 3778600.

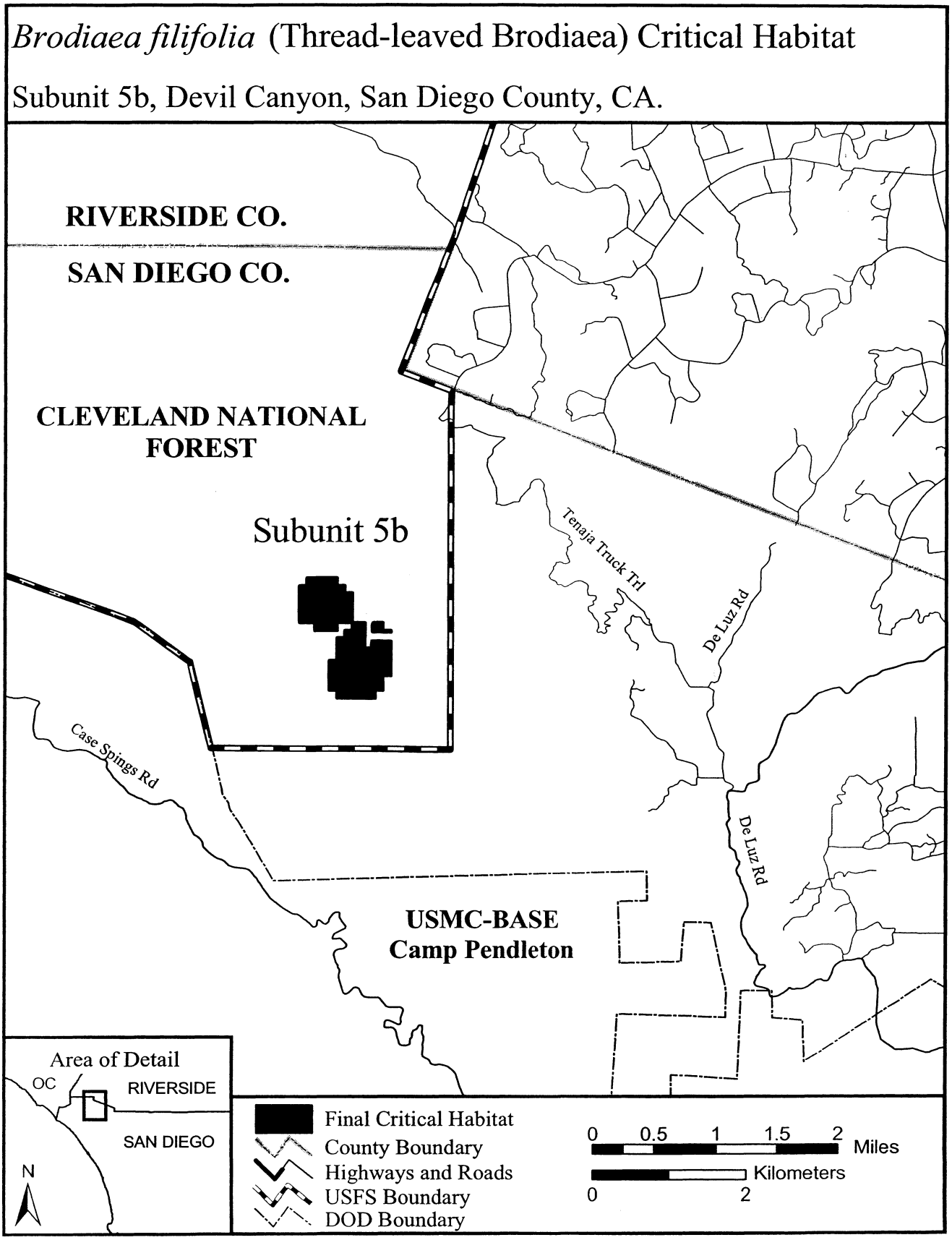
(iv) Map of critical habitat Subunit 1b for *Brodiaea filifolia* (Thread-leaved brodiaea) follows:


Brodiaea filifolia (Thread-leaved Brodiaea) Critical Habitat
Subunit 1b, San Dimas, Los Angeles County, CA.
ANGELES NATIONAL FOREST
Subunit 1b
E. Foothill Boulevard
San Dimas
N. San Dimas Canyon Rd
E. Alosta Ave
E. Foothill Boulevard
Wheeler Ave
210
30
Damien Ave
E. Gladstone St
Area of Detail
LOS ANGELES
SB
ORANGE
N
Final Critical Habitat
Highways and Roads
USFS Boundary
0
0.5
1
Miles
0
1
Kilometers

(6) Map Unit 5: Northern San Diego County, California, from USGS 1:24,000 quadrangle maps Margarita Peak, and Fallbrook, California.

(i) Subunit 5b: Devil Canyon, San Diego County; land bounded by the following UTM coordinates (E, N): 465000, 3702200; 464800, 3702200; 464800, 3702100; 464500, 3702100; 464500, 3702200; 464300, 3702200; 464300, 3702700; 464400, 3702700; 464400, 3702800; 464800, 3702800; 464800, 3702700; 464900, 3702700; 464900, 3702600; 465000, 3702600; returning to 465000, 3702200; and land bounded by 465000, 3702200; 465166, 3702200; 465160, 3701865; 465246, 3701865; 465259, 3701960; 465500, 3701955; 465500, 3701500; 465400, 3701500; 465400, 3701300; 465300, 3701300; 465300, 3701200; 464800, 3701200; 464800, 3701300; 464700, 3701300; 464700, 3701700; 464800, 3701700; 464800, 3702000; 464900, 3702000; 464900, 3702100; 465000, 3702100; returning to 465000, 3702200; and land bounded by 465272, 3702200; 465400, 3702200; 465400, 3702100; 465500, 3702100; 465500, 3702078; 465261, 3702085; 465264, 3702184; returning to 465272, 3702200.

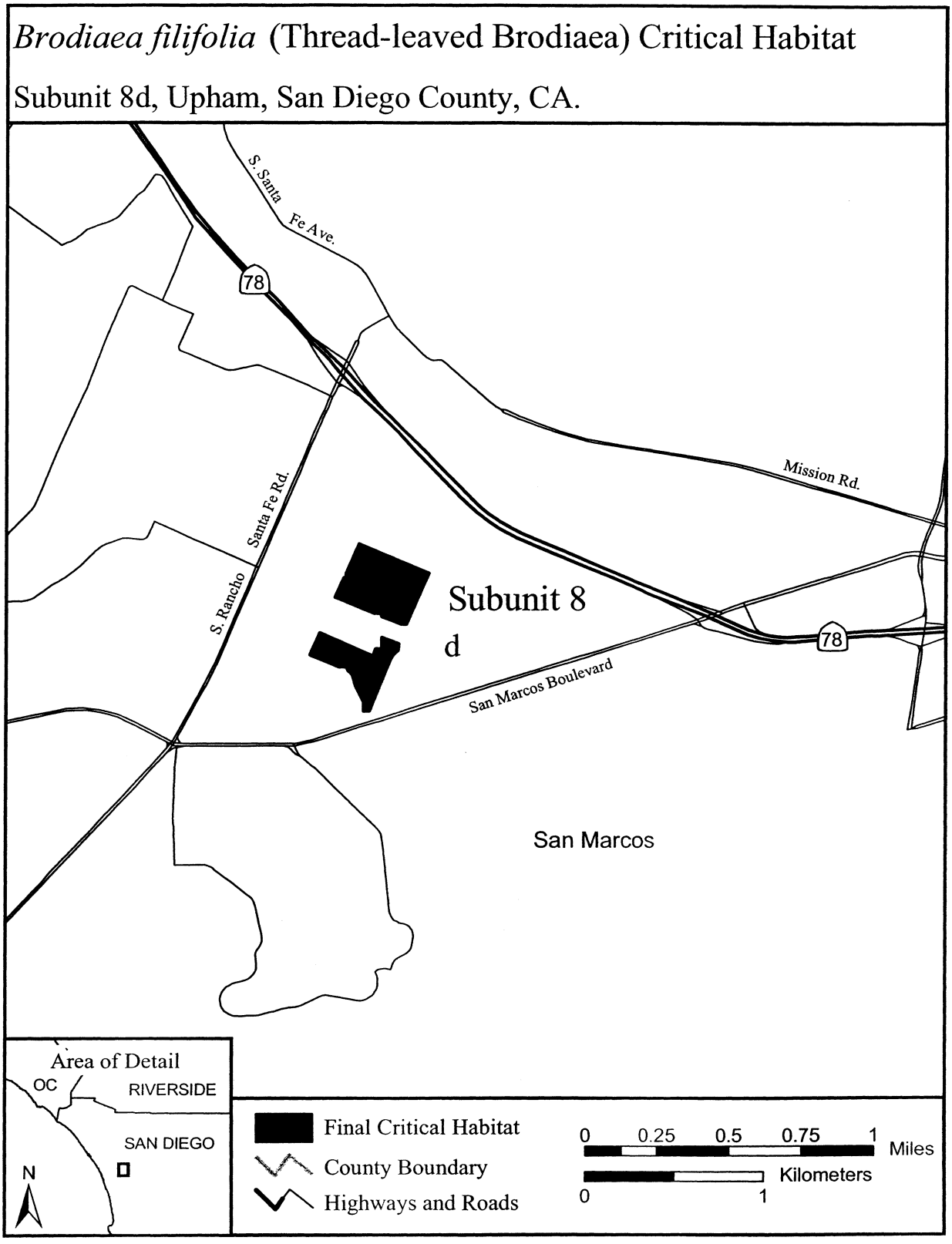
(ii) Map of critical habitat Subunit 5b for *Brodiaea filifolia* (Thread-leaved brodiaea), follows:


Brodiaea filifolia (Thread-leaved Brodiaea) Critical Habitat
Subunit 5b, Devil Canyon, San Diego County, CA.
RIVERSIDE CO.
SAN DIEGO CO.
CLEVELAND NATIONAL FOREST
Subunit 5b
Tenaja Truck Trl
De Luz Rd
Case Spings Rd
De Luz Rd
USMC-BASE
Camp Pendleton
Area of Detail
OC
RIVERSIDE
SAN DIEGO
N
Final Critical Habitat
County Boundary
Highways and Roads
USFS Boundary
DOD Boundary
0 0.5 1 1.5 2 Miles
0 2 Kilometers

(7) Map Unit 8: San Marcos, San Diego County, California, from USGS 1:24,000 quadrangle map San Marcos, California.

(i) Subunit 8d: Upham; land bounded by the following UTM coordinates (E, N): 481588, 3666600; 481600, 3666600; 481600, 3666627; 481672, 3666791; 482059, 3666627; 481935, 3666339; 481905, 3666339; 481800, 3666382; 481800, 3666400; 481758, 3666400; 481540, 3666490; returning to 481588, 3666600; and land bounded by: 481765, 3666200; 481800, 3666200; 481800, 3666266; 481893, 3666230; 481892, 3666214; 481890, 3666191; 481866, 3666173; 481848, 3666144; 481729, 3665850; 481700, 3665849; 481700, 3665900; 481655, 3665990; 481635, 3666053; 481622, 3666069; 481612, 3666077; 481611, 3666077; 481600, 3666100; 481561, 3666100; 481401, 3666167; 481454, 3666290; 481750, 3666160; returning to 481765, 3666200.

(ii) Map of critical habitat Subunit 8d for *Brodiaea filifolia* (Thread-leaved brodiaea) follows:



Dated: November 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–23693 Filed 12–12–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
December 13, 2005

Part III

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1805

Notices of Funding Opportunities; Notices Community Development Financial Institutions Program; Interim Rule

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the FY 2006 Funding Round and the FY 2007 Funding Round of the Community Development Financial Institutions Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates: Applications for the FY 2006 Funding Round must be received by 5 p.m. ET on January 23, 2006. Applications for the FY 2007 Funding Round must be received by 5 p.m. ET on January 9, 2007.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with two consecutive funding rounds of the Community Development Financial Institutions (CDFI) Program: (i) the FY 2006 Funding Round and (ii) the FY 2007 Funding Round.

I. Funding Opportunity Description

A. Through the CDFI Program, the Community Development Financial Institutions Fund (the Fund) provides: (i) Financial Assistance (FA) awards to CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their particular Target Markets, to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and/or to become certified CDFIs.

B. The regulations governing the CDFI Program are found at 12 CFR Part 1805 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the CDFI Program. The Fund is publishing the revised Interim Rule in this issue of the **Federal Register**. The Interim Rule published in this issue of the **Federal Register** contains revisions concerning how certain Applicants may use retained earnings as matching funds for a FA award. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. Funding Availability

1. *FY 2006 Funding Round:* Through the FY 2006 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $25 million in appropriated funds, of which (i) approximately $2 million in appropriated funds may be awarded to Category I/SECA (defined in Section III.A.1, below) Applicants in the form of FA awards that may be coupled with TA grants; (ii) approximately $21 million in appropriated funds may be awarded to Category II/Core (defined in Section III.A.1, below) Applicants in the form of FA awards that may be coupled with TA grants; and (iii) approximately $2 million in appropriated funds may be awarded to Applicants in the form of TA grants only. The Fund reserves the right to award in excess of $25 million in appropriated funds to Applicants (and/or more or less than $2 million to Category I/SECA Applicants, and/or more or less than $21 million to Category II/Core Applicants) in the FY 2006 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *FY 2007 Funding Round:* Through the FY 2007 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $25 million in appropriated funds, of which (i) approximately $2 million in appropriated funds may be awarded to Category I/SECA Applicants in the form of FA awards that may be coupled with TA grants; (ii) approximately $21 million in appropriated funds may be awarded to Category II/Core Applicants in the form of FA awards that may be coupled with TA grants; and (iii) approximately $2 million in appropriated funds may be awarded to Applicants in the form of TA grants only. The Fund reserves the right to award in excess of $25 million in appropriated funds to Applicants (and/or more or less than $2 million to Category I/SECA Applicants, and/or more or less than $21 million to Category II/Core Applicants) in the FY 2007 Funding Round, provided that the funds are available and the Fund deems it appropriate.

3. *Availability of Funds for the FY 2007 Funding Round:* Because funds for the FY 2007 Funding Round have not yet been appropriated, interested parties should be aware that electing to defer the submission of an application until the FY 2007 Funding Round, rather than for the FY 2006 Funding Round, entails some risk. If funds are not appropriated for the FY 2007 Funding Round, there will not be a FY 2007 Funding Round. Further, it is possible that if funds are appropriated for the FY 2007 Funding Round, the amount of such funds may be less than the amounts set forth above.

B. Types of Awards

An Applicant may submit an application either for: (i) a FA award only; (ii) a FA award and a TA grant; or (iii) a TA grant.

1. *FA Awards:* The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application. The Fund reserves the right, in its sole discretion, to provide a FA award on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. *TA Grants:* (a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as business, strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services

(such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact and/or to become certified as a CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a CDFI.

C. Notice of Award; Assistance Agreement

Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. *Eligible Applicants:* The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *FA Applicant Categories:* All Applicants for FA awards through this NOFA must meet the criteria for one of the following two categories of CDFIs:

FA applicant category	Criteria	What can it apply for?
FY 2006 Funding Round: Category I/Small and/or Emerging CDFI Assistance (SECA).	A Category I/SECA Applicant is a Certified CDFI or a Certifiable CDFI that: Has total assets as of December 31, 2005 as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million. • Insured Credit Unions: up to $10 million • Venture capital funds: up to $10 million • Other CDFIs: up to $5 million or Began operations on or after January 1, 2002 and Prior to the FY 2006 Funding Round application deadline, has not been selected to receive in excess of $500,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	A Category I/SECA Applicant may request up to and including $500,000 in FA funds, and up to and including $100,000 in TA funds.
FY 2007 Funding Rounds: Category I/Small and/or Emerging CDFI Assistance (SECA).	A Category I/SECA Applicant is a Certified CDFI or Certifiable CDFI that: Has total assets as of December 31, 2006 as follows:. • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million. • Insured Credit Unions: up to $10 million • Venture capital funds: up to $10 million • Other CDFIs: up to $5 million or Began operations on or after January 1, 2003 and Prior to the FY 2007 Funding Round application deadline, has not been selected to receive in excess of $500,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	A Category I/SECA Applicant may request up to and including $500,000 in FA funds, and up to and including $100,000 in TA funds.
FY 2006 and FY 2007 Funding Rounds: Category II/Core	A Category II/Core Applicant is a Certified CDFI or a Certifiable CDFI that meets all other eligibility requirements described in this NOFA	A Category II/Core Applicant may request up to and including $2 million in FA funds, and up to and including $100,000 in TA funds.

Please note: Any Applicant, regardless of total assets, years in operation, or prior Fund awards, that requests FA funding in excess of $500,000 is classified as a Category II/Core Applicant.

For the purposes of this NOFA, the term ''began operations'' is defined as the month and year in which the Applicant first incurred operating expenses of any type. Also, for purposes of this NOFA, the term ''Native Initiatives Funding Programs'' refers to the following programs administered by the Fund: The Native American CDFI Technical Assistance (NACTA) Component of the CDFI Program, the Native American CDFI Development

(NACD) Program, the Native American Technical Assistance (NATA) Component of the CDFI Program, and the Native American CDFI Assistance (NACA) Program.

The Fund will evaluate, rank and make awards to Category I/SECA Applicants separately from Category II/Core Applicants. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

2. *TA Applicants:*

TA applicants	Criteria	What can it apply for?
All TA Applicants	A TA Applicant must be a Certified CDFI, a Certifiable CDFI, or an Emerging CDFI	The Fund anticipates making TA grants up to $100,000 each.

The Fund, in its sole discretion, reserves the right to award amounts less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

3. *CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified CDFIs and Certifiable CDFIs; eligible TA Applicants include Certified CDFIs, Certifiable CDFIs and Emerging CDFIs, defined as follows:

(a) *Certified CDFIs:* A certified CDFI whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must submit a ''Certification of Material Event Form'' to the Fund not later than January 13, 2006 (for the FY 2006 Funding Round) or not later than December 4, 2006 (for the FY 2007 Funding Round), or such other dates as the Fund may proscribe, in accordance with the instructions on the Fund's Web site at *www.cdfifund.gov.* Please note: the Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable CDFIs:* For purposes of this NOFA, a Certifiable CDFI is an entity from which the Fund receives a complete CDFI Certification Application no later than January 13, 2006 (for the FY 2006 Funding Round) or December 4, 2006 (for the FY 2007 Funding Round), or such other dates as the Fund may proscribe, evidencing that the Applicant meets the requirements to be certified as a CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *www.cdfifund.gov.* Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable CDFIs please note: while your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging CDFIs:* For purposes of this NOFA, an Emerging CDFI is an entity that demonstrates to the satisfaction of the Fund that it has a reasonable plan to be certified as a CDFI by December 31, 2008 or such other date selected by the Fund (for the FY 2006 Funding Round) or December 31, 2009 or such other date selected by the Fund (for the FY 2007 Funding Round). Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to become certified as a CDFI by a date certain.

D. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap.* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the

Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) The Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2005 (for the FY 2006 Funding Round) and Calendar Year 2006 (for the FY 2007 Funding Round). Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) The Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in the Calendar Year 2005 (for the FY 2006 Funding Round) and Calendar Year 2006 (for the FY 2007 Funding Round).

6. *Undisbursed balances:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed funds. For purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of a prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the Awardee. ''Undisbursed funds'' does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the applicable application deadline of this NOFA.

7. *Exception for Applicants impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed balances) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants for the FY 2006 Funding Round and the FY 2007 Funding Round.

8. *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). All outstanding reports, disbursement or compliance questions should be directed to the Grants Manager by e-mail at grantsmanagement@cdfi.treas.gov; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 19, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round) (two business days before the respective application deadlines). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. on said dates, until after the respective funding application deadlines.

9. *Limitation on Awards:* An Applicant may receive only one award through either the CDFI Program or the Native American CDFI Assistance (NACA) Program in the same funding year. An Applicant may apply under both the CDFI Program and the NACA Program, but will not be selected for funding under both. A CDFI Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

10. *Other Targeted Populations as Target Markets:* Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that

Alaska Natives residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services.

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented:

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American'');

(c) Hispanic or Latino: a person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term ''Spanish origin'' can be used in addition to ''Hispanic or Latino''); and

(d) Native Hawaiian: a person having origins in any of the original peoples of Hawaii; and

(e) Other Pacific Islander: a person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

E. *Matching Funds:* 1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's Web site for further information.

2. *Matching Funds Requirements Per Applicant Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *Category I/SECA Applicants:* (i) *FY 2006 Funding Round:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2004 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 15, 2007 (with required documentation of such receipt received by the Fund not later than March 30, 2007), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007.

(ii) *FY 2007 Funding Round:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008.

(b) *Category II/Core Applicants:* (i) *FY 2006 Funding Round:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2004 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 15, 2007 (with required documentation of such receipt received by the Fund not later than March 30, 2007), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

(ii) *FY 2007 Funding Round:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

3. *Matching Funds Terms Defined; Required Documentation.* (a) ''*Matching funds in-hand*'' means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, and equity investment). For a loan, the Applicant must provide

the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) ''*Firmly committed matching funds*'' means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 2 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/ or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 (for the FY 2006 Funding Round) or January 1, 2006 (for the FY 2007 Funding Round) and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 50 percent of the required matching funds by March 15, 2007 (for the FY 2006 Funding Round) and March 14, 2008 (for the FY 2007 Funding Round) (with required documentation of such receipt received by the Fund not later than March 31, 2007 (for the FY 2006 Funding Round) and March 30, 2008 (for the FY 2007 Funding Round)), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than 50 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007 (for the FY 2006 Funding Round) and March 14, 2008 (for the FY 2007 Funding Round). In the case of item (ii) of this paragraph, the CDFI Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. *Form of Application Submission:* Applicants may submit applications under this NOFA either (i) through Grants.gov or (ii) in paper form. Applications sent by facsimile or other form will not be accepted.

B. *Grants.gov:* For the FY 2006 Funding Round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund will post to its Web site at *www.cdfifund.gov* instructions for accessing and submitting an application through Grants.gov. The application instructions will be posted as soon as they are available and once the application materials are accessible through Grants.gov. The anticipated release date for the application instructions is January 6, 2006. Applicants are encouraged to start the registration process now at www.Grants.gov as the process may take several weeks to fully complete. See the following link for

information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*.

C. *Paper Applications:* If an applicant is unable to submit an application through Grants.gov, it must submit to the Fund a request for a paper application using the CDFI Program Paper Application Submission Form, and the request must be received by 5 p.m. ET on January 6, 2006 (for the FY 2006 Funding Round) or December 8, 2006 (for the FY 2007 Funding Round). The CDFI Program Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–7754. The completed CDFI Program Paper Application Submission Form should be directed to the attention of the Fund's Chief Information Officer and must be sent by facsimile to (202) 622–7754. These are not toll free numbers. Paper applications must be submitted in the format and with the number of copies specified in the application instructions.

D. *Application Content Requirements:* Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An application submitted through Grants.gov that does not include an EIN is incomplete and will be deemed ineligible. A paper application that does not include a valid EIN is incomplete and will be rejected and returned to the sender. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as a DUNS number or EIN information).

E. *MyCDFIFund Accounts:* All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp*.

F. *Application Deadlines; Address for Paper Submissions; Late Delivery:* Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:* (a) *FY 2006 Funding Round:* Applications submitted via Grants.gov must be received in accordance with the instructions provided by the Fund, by 5 p.m. ET on January 23, 2006. In addition, Applicants that submit applications via Grants.gov and are unable to upload electronically any required paper attachments, must separately submit (by mail or other courier/delivery service) any required paper attachments at the address set forth below by 5 p.m. ET on January 26, 2006. Paper applications and all attachments must be received at the address set forth below by 5 p.m. ET on January 23, 2006.

(b) *FY 2007 Funding Round:* Applications submitted via Grants.gov must be received in accordance with the instructions provided by the Fund, by 5 p.m. ET on January 9, 2007. In addition, Applicants that submit applications via Grants.gov and are unable to upload electronically any required paper attachments, must separately submit (by mail or other courier/delivery service) any required paper attachments; said documents must be received at the address set forth below by 5 p.m. ET on January 12, 2007. Paper applications must be received at the address set forth below by 5 p.m. ET on January 9, 2007.

2. *Address for Paper Submissions:* A complete paper application (or, in the case of an application submitted via Grants.gov, the required paper submissions) must be received at the following address, within the applicable deadline: CDFI Fund Grants Manager, CDFI Program, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–6088 (this is not a toll free number). Any documents received in any other office, including the Fund's Washington, DC office, will be rejected and returned to the sender.

3. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected and returned to the sender. An application submitted via Grants.gov and all required paper attachments must be received by the applicable time and date set forth above. A paper application and all required paper attachments must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

D. *Intergovernmental Review:* Not applicable.

E. *Funding Restrictions:* For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. *Criteria:* The Fund will evaluate each application using numeric scores with respect to the following five sections:

1. *Market Analysis* (TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points:) The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA. The form and content of such special consideration will be further clarified in the CDFI Program application.

2. *Business Strategy* (TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is

proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate (i) the Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that (i) it has a record of success in serving said Investment Area(s) or Targeted Population(s) and (ii) it will expand its operations into a new Investment Area or to serve a new Targeted Population, offer more products or services, or increase the volume of its current business.

4. *Management* (TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (TA-only Applicants: 10 points; Category I/SECA: 10 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds within the time table set forth above.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. The Fund will assess the reasonableness of the plan to become certified by December 31, 2008 (for the FY 2006 Funding Round) or December 31, 2009 (for the FY 2007 Funding Round), taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. *Review and Selection Process:* 1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application will be rejected as incomplete and returned to the sender. If an Applicant does not meet eligibility requirements, its application will be rejected and returned to the sender.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

3. *Application Scoring; Ranking:* (a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2005 (for FY

2006 Funding Round Applicants) and calendar year 2006 (for FY 2007 Funding Round Applicants), in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2004 and FY 2005 for FY 2006 Funding Round Applicants and FY 2005 and FY 2006 for FY 2007 Funding Round Applicants); (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2003, FY 2004 or FY 2005 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the CDFI Program. All questions regarding outstanding reports or compliance should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 19, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round). The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on January 19, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round) until after the applicable funding application deadline.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, as follows:

(i) *TA-only Applicants and Category I/SECA Applicants* will be ranked from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

(ii) *Category II/Core Applicants* must receive scores in both the Management category and the Financial Health and Viability category that each equal at least 50 percent of the available points in each of those sections. For Category II/Core Applicants that exceed this threshold, the Fund will use the combined scores of the Market Analysis, Product Design and Implementation Strategy, and Community Development Performance categories to rank such Applicants, highest to lowest.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. TA-only Applicants, Category I/ SECA and Category II/Core Applicants will be ranked separately. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2006 (for the FY 2006 Funding Round) or September 30, 2007 (for the FY 2007 Funding Round) or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by email using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. *Notice of Award:* The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it

deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the applicable application deadline, may not apply for a new award through another NOFA for one CDFI or NACA Program funding round after the date of said deobligation.

B. *Assistance Agreement:* Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the

Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. *Reporting:* 1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving Financial Assistance); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 19, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round). The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's web site at *http://www.cdfifund.gov.* Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site should not be relied upon for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including

contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

VIII. Information Sessions and Outreach

In connection with the Fiscal Year 2006 and FY 2007 Funding Round, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: December 1, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–23750 Filed 12–12–05; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the FY 2006 Funding Round and the FY 2007 Funding Round of the Native American CDFI Assistance Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates: Applications for the FY 2006 Funding Round must be received by 5 p.m. ET on February 14, 2006. Applications for the FY 2007 Funding Round must be received by 5 p.m. ET on February 14, 2007.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with two consecutive funding rounds of the Native American CDFI Assistance (NACA) Program: (i) The FY 2006 Funding Round and (ii) the FY 2007 Funding Round.

I. Funding Opportunity Description

A. Through the NACA Program, the Community Development Financial Institutions Fund (the Fund) provides Financial Assistance (FA) awards to Community Development Financial Institutions (CDFIs) that have at least 50 percent of their activities directed toward serving Native American, Alaska Native and/or Native Hawaiian communities (Native CDFIs) in order to build their capacity to better address the community development and capital access needs of their Target Market(s) and to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations. Through the NACA Program, the Fund provides Technical Assistance (TA) grants to entities that propose to become Native CDFIs, and to Native organizations, Tribes and Tribal organizations (Sponsoring Entities) that propose to create Native CDFIs, in order to build their capacity to better address the community development and capital access needs of their Target Market(s), to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, or to create Native CDFIs.

B. The regulations governing the CDFI Program, found at 12 CFR Part 1805 (the Interim Rule), provide relevant guidance on evaluation criteria and other requirements of the NACA Program. The Fund is publishing the revised Interim Rule in this issue of the **Federal Register.** The Interim Rule published in this issue of the **Federal Register** contains revisions concerning how certain Applicants may use retained earnings as matching funds for a FA award. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. *Funding Availability:* 1. *FY 2006 Funding Round:* Through the FY 2006 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $3.5 million in appropriated funds through the NACA Program. The Fund reserves the right to award in excess of $3.5 million in appropriated funds to Applicants in the FY 2006 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *FY 2007 Funding Round:* Through the FY 2007 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $3.5 million in appropriated funds through the NACA Program. The Fund reserves the right to award in excess of $3.5 million in appropriated funds to Applicants in the FY 2007 Funding Round, provided that the funds are available and the Fund deems it appropriate.

3. *Availability of Funds for the FY 2007 Funding Round:* Because funds for the FY 2007 Funding Round have not yet been appropriated, interested parties should be aware that electing to defer the submission of an application until the FY 2007 Funding Round, rather than for the FY 2006 Funding Round, entails some risk. If funds are not appropriated for the FY 2007 Funding Round, there will not be a FY 2007 Funding Round. Further, it is possible that if funds are appropriated for the FY 2007 Funding Round, the amount of such funds may be less than the amounts set forth above.

B. *Types of Awards:* A NACA Program Applicant may submit an application for: (i) a FA award; (ii) a FA award and a TA grant; or (iii) a TA grant.

1. *FA Awards:* The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant. The Fund reserves the right, in its sole discretion, to provide a FA award on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. *TA Grants:* (a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than and in addition to that which are requested by an Applicant.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as business, strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home

buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact, to become certified as a Native CDFI, or to create a Native CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market, and/or to become certified as a Native CDFI or to create a Native CDFI.

C. *Notice of Award; Assistance Agreement:* Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. *Eligible Applicants:* The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *CDFI Certification Requirements:* For purposes of this NOFA, any Applicant that is a Certified Native CDFI or a Certifiable Native CDFI may apply for a FA award or a FA award and a TA grant. An Applicant that is an Emerging Native CDFI or a Sponsoring Entity may apply for a TA grant only.

(a) *Certified Native CDFIs:* For purposes of this NOFA, a Certified Native CDFI is a Certified CDFI that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must include a ''Certification of Material Event Form'' with its NACA application by the applicable application deadline, in accordance with the instructions on the Fund's Web site at *www.cdfifund.gov.* Please note: the Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable Native CDFIs:* For purposes of this NOFA, a Certifiable Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and from which the Fund receives a complete CDFI Certification Application by the applicable deadline of the NACA Program application, evidencing that the Applicant meets all requirements to be certified as a CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *www.cdfifund.gov.* Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable Native CDFIs please note: While your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse FA award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging Native CDFIs:* For purposes of this NOFA, an Emerging Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and that demonstrates to the satisfaction of the Fund that it has a reasonable plan to achieve CDFI certification within a reasonable timeframe. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to work toward CDFI certification by a date certain.

(d) *Sponsoring Entities:* For purposes of this NOFA, a Sponsoring Entity is an entity that proposes to create a separate legal entity that will become certified as a CDFI. For purposes of this NOFA, Sponsoring Entities include: (a) A Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; (b) an organization whose primary mission is to serve a Native Community including, but not limited to an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or educational organization, or Chamber of Commerce, and that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community. Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Each Sponsoring Entity that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to create a legal entity by a date certain that will, in turn, seek CDFI certification.

D. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap.* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s) as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has

submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund): (i) Is a prior Fund Awardee or allocatee under any Fund program; and (ii) has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) The Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round). Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) The Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round).

6. *Undisbursed balances:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed funds. For purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of a prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the Awardee. ''Undisbursed funds'' does not include (i) tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the applicable application deadline of this NOFA.

7. *Exception for Applicants impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed balances) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants for the FY 2006 Funding Round and the FY 2007 Funding Round.

8. *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or de-obligation of any outstanding balance of said prior award(s). All outstanding reports, disbursement or compliance questions should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 10, 2006 (for the FY 2006

Funding Round) and February 12, 2007 (for the FY 2007 Funding Round) (two business days before the respective application deadlines). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. on said dates, until after the respective funding application deadlines.

9. *Limitation on Awards:* An Applicant may receive only one award through either the CDFI Program or the NACA Program in the same funding year. An Applicant may apply under both the CDFI Program and the NACA Program, but will not be selected for funding under both. A NACA Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

E. *Matching Funds:* 1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's Web site for further information.

2. *Matching Funds Requirements Per Funding Round:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *FY 2006 Funding Round:* A NACA Program Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2004 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 15, 2007 (with required documentation of such receipt received by the Fund not later than March 30, 2007), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007.

(b) *FY 2007 Funding Round:* A NACA Program Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008.

3. *Matching Funds Terms Defined; Required Documentation.* (a) *''Matching funds in-hand''* means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (*i.e.*, grant, loan, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) *''Firmly committed matching funds''* means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 5 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained

earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 (for the FY 2006 Funding Round) or January 1, 2006 (for the FY 2007 Funding Round) and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 50 percent of the required matching funds by March 15, 2007 (for the FY 2006 Funding Round) or March 14, 2008 (for the FY 2007 Funding Round) (with required documentation of such receipt received by the Fund not later than March 31, 2007 (for the FY 2006 Funding Round) or March 30, 2008 (for the FY 2007 Funding Round)), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than 50 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007 (for the FY 2006 Funding Round) or March 14, 2008 (for the FY 2007 Funding Round). In the case of item (ii) of this paragraph, the NACA Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. *Form of Application Submission:* Applicants must submit applications under this NOFA in paper form. Applications sent by facsimile or other form will not be accepted. The NACA Program application (including detailed application content requirements and electronic templates for application forms) may be found on the Fund's Web site: *http://www.cdfifund.gov.* The Fund will send paper application materials to any Applicant that is unable to download the form from the Web site. To have application materials sent to you, please contact the Fund by telephone at (202) 622–6355, by e-mail at *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–7754. These are not toll free numbers. Applicants should allow at least one week for the timely receipt of paper application materials in the mail.

B. Applications must be submitted in the format specified in the application instructions. An Applicant requesting only a TA grant must submit one original application and three (3) complete copies. An Applicant requesting a FA award must submit one original application and four (4) complete copies. Do not bind the original application or separate the sections with tabs. Each copy must be placed in a three-ring binder, without staples or other forms of binding, and each section must be separated by tabs.

C. *Application Content Requirements:* Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An application that does not include a valid EIN will be deemed incomplete. Incomplete applications will be rejected and returned to the sender. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as DUNS number or EIN information).

D. *MyCDFIFund Accounts:* All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. *Application Deadlines; Address for Paper Submissions; Late Delivery:* Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:* (a) *FY 2006 Funding Round:* Applications must be

received by the Fund at the address cited below and in accordance with the instructions provided on the Fund's Web site, by 5 p.m. ET on February 14, 2006.

(b) *FY 2007 Funding Round:* Applications must be received by the Fund at the address cited below and in accordance with the instructions provided on the Fund's Web site, by 5 p.m. ET on February 14, 2007.

2. *Address for Application Submission:* A complete application must be received at the following address, by the applicable deadline: CDFI Fund Grants Manager, NACA Program, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–6088 (this is not a toll free number). Any documents received in any other office, including the Fund's Washington, DC office, will be rejected and returned to the sender.

3. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected and returned to the sender. An application, including the required signed signature page, and all required paper attachments, must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

D. *Intergovernmental Review:* Not applicable.

E. *Funding Restrictions:* For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. *Criteria:* The Fund will evaluate each application using numeric scores with respect to the following five sections:

1. *Market Analysis* (25 points): The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA. The form and content of such special consideration will be further clarified in the NACA Program application.

2. *Business Strategy* (25 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (20 points): The Fund will evaluate (i) the Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that (i) it has a record of success in serving said Investment Area(s) or Targeted Population(s) and (ii) it will expand its operations into a new Investment Area or to serve a new Targeted Population, offer more products or services, or increase the volume of its current business.

4. *Management* (20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (10 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds within the time table set forth above.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. An Applicant that requests a TA grant for recurring

activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. *Review and Selection Process:* 1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application will be rejected as incomplete and returned to the sender. If an Applicant does not meet eligibility requirements, its application will be rejected and returned to the sender.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance and/or Native community development. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

3. *Application Scoring; Ranking:* (a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum total score in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2005 (for FY 2006 Funding Round Applicants) and calendar year 2006 (for FY 2007 Funding Round Applicants), in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2004 and FY 2005 for FY 2006 Funding Round Applicants and FY 2005 and FY 2006 for FY 2007 Funding Round Applicants); (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2003, FY 2004 or FY 2005 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the NACA Program. All questions regarding outstanding reports or compliance should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 10, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round). The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on February 10, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round) until after the applicable funding application deadline.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2006 (for the FY 2006 Funding Round) or September 30, 2007 (for the FY 2007 Funding Round) or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues may be offered a debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by e-mail or fax using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. *Notice of Award:* The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares

common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the applicable application deadline, may not apply for a new award through another NOFA for one CDFI or NACA Program funding round after the date of said deobligation.

B. *Assistance Agreement:* Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. *Reporting:* 1. Reporting requirements: The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report (not required of Sponsoring Entities); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving FA awards); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the NACA Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives a FA award must establish a separate bank account for the FA funds and provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for that separate bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 10, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round). The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at

(202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's web site at *http://www.cdfifund.gov*. Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site should not be relied upon for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by email using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp*.

VIII. Information Sessions and Outreach

In connection with the Fiscal Year 2006 and FY 2007 Funding Round, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: December 1, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–23748 Filed 12–12–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505–AA92

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The Fund provides financial assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In addition, through the CDFI Program, the Fund provides technical assistance grants to CDFIs and entities that propose to become CDFIs, for the purpose of increasing their capacity to serve their target markets.

This revised interim rule includes one revision that the Fund believes will inure to the benefit of CDFIs, CDFI Program applicants, and CDFI Program awardees. This revised interim rule includes a revised § 1805.504, Retained Earnings, which clarifies the use of retained earnings as matching funds for a financial assistance award.

DATES: Revised interim rule effective December 13, 2005; comments must be received in the offices of the Fund on or before February 13, 2006.

ADDRESSES: You may submit comments concerning this interim rule by any of the following methods: (i) Via the Federal e-Rulemaking Portal at *http://www.regulations.gov* (please follow the instructions for submitting comments); (ii) via e-mail to the Fund at *reg_comments@cdfi.treas.gov* (please use an ASCII file format and provide your full name and mailing address); (iii) via mail or hand delivery to the Office of Legal Counsel, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; or (iv) via fax to 202/622–8244. All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the Fund's Web site at *http://www.cdfifund.gov,* including any personal information provided. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Berg, Legal Counsel, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*) (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the Act.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to CDFIs, which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Through the CDFI Program, the Fund provides CDFIs with financial assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Additionally, many CDFIs are in formation or in the early stages of development in many markets underserved by traditional financial institutions, including rural and Native American communities. The CDFI Program assists such entities—as well as established CDFIs—by providing grants through which they may acquire technical assistance to build their capacity to serve their target markets. Applicants participate in the CDFI Program through a merit-based qualitative application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. An entity generally receives financial assistance monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

On May 11, 2004, the Fund published in the **Federal Register** a revised interim rule (69 FR 26260) implementing the CDFI Program (the current rule). The deadline for the submission of comments on the current rule was July 12, 2004.

II. Comments on the May 11, 2004 Interim Rule

By the close of the July 12, 2004 comment period, the Fund received no comments on the current rule.

III. Summary of Changes

Section 1805.504 Retained Earnings

Section 1805.504 of the current rule contains the requirements for use of retained earnings as matching funds for a financial assistance award. This interim rule revises § 1805.504 by making consistent the requirements for a for-profit entity and a nonprofit entity (not including Insured Credit Unions or State-Insured Credit Unions). This revision is made for the purpose of ensuring that for-profit and nonprofit entities are treated the same. In

addition, this section is revised to clarify what the Fund means by retained earnings: specifically, an entity's operating income minus operating expenses less any dividend payments.

IV. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Numbers 1559–0006, 1559–0021, and 1559–0022. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005 and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Domestic Assistance Number: Community Development Financial Institutions Program—21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

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1805.807 Conflict of interest requirements.
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1805.810 Fund deemed not to control.
1805.811 Limitation on liability.
1805.812 Fraud, waste and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award (BEA) Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period prior to the date the Fund selected the CDFI to receive a Bank Enterprise Award (meaning, the date of the Fund's BEA Program notice of award); or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a BEA Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that Controls, is Controlled by, or is under common Control with another company;

(c) *Applicant* means any entity submitting an application for CDFI Program assistance or funding under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

(e) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

(f) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(g) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(h) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(i) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(j) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(k) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(l) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(m) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(n) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a State-Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(o) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide Financial Products or Development Services to an Investment Area(s) or a Targeted Population(s);

(p) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOTICE OF FUNDS AVAILABILITY);

(q) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

(r) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(s) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products or Financial Services of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(t) *Equity Investment* means an investment made by an Applicant that, in the judgment of the Fund, supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments may comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), a purchase of secondary capital, or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Products* means: Loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in Insured Credit Union CDFIs, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs.

(v) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services;

(w) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(x) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(y) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(z) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(aa) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(bb) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(cc) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(dd) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(ee) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(ff) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(gg) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union;

(hh) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

(ii) *State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

(jj) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(kk) *Targeted Population* means individuals or an identifiable group of individuals meeting the requirements of § 1805.201(b)(3); and

(ll) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

(mm)(1) *Voting Securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1559–0006, 1559–0021 and 1559–0022.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(4) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund:

(i) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and

(ii) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability.

(3) The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(ii) of this section, the Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.

(4) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(5) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b) or (a)(4) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and § 1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas).

(2) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(i) Depository Institution Holding Company;

(ii) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or

(iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) *Target Market.* (i) *General.* An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(*1*) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands); and either

(*2*) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

(*3*) Encompasses (i.e. wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(*1*) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(*2*) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(*1*) The percentage of the population living in poverty is at least 20 percent;

(*2*) In the case of an Investment Area located:

(*i*) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(*ii*) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-

Metropolitan Area median family income, whichever is greater;

(*3*) The unemployment rate is at least 1.5 times the national average;

(*4*) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(*5*) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the Applicant adequately demonstrate a pattern of unmet needs for Financial Products or Financial Services within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities.

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of consumer loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable Notice of Funds Availability. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates,

terms and conditions that are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs and State-Insured Credit Unions. Deposits in an Insured CDFI or a State-Insured Credit Union shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart E—Matching Funds Requirements

§ 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (*e.g.*, equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a ''severe constraints waiver'' as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a ''severe constraints waiver'' only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable Notice of Funds Availability.

§ 1805.504 Retained earnings.

(a) An Applicant may use its retained earnings to match a request for a financial assistance grant from the Fund. An Applicant that proposes to meet all or a portion of its matching funds requirements by committing available earnings retained from its operations shall be subject to the restrictions described in this section. Retained earnings shall be calculated as

directed by the Fund in the applicable Notice of Funds Availability, the financial assistance application and/or related guidance materials. Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

(b) In the case of an Applicant that is not an Insured Credit Union or a State-Insured Credit Union, retained earnings that may be used for matching funds purposes shall consist of:

(1) The increase in retained earnings (meaning, for purposes of § 1805.504(b), operating income minus operating expenses less any dividend payments) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 2003 less retained earnings at the end of fiscal year 2002); or

(2) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(c)(1) In the case of an Applicant that is an Insured Credit Union or a State-Insured Credit Union, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant, provided that the Assistance Agreement shall require that:

(A) The Awardee shall increase its member shares, non-member shares, outstanding loans and/or other measurable activity as defined in and by an amount that is set forth in an applicable Notice of Funds Availability; and

(B) Such increase must be achieved by a date certain set forth in the applicable Notice of Funds Availability;

(C) The Applicant's Comprehensive Business Plan shall discuss its strategy for achieving the increases described in (c)(1)(iii)(A) of this section and the activities associated therewith;

(D) The level from which the achievement of said increases will be measured will be as of July 31 of the calendar year in which the applicable application deadline falls (or such other date as set forth in the applicable Notice of Funds Availability); and

(E) Financial assistance shall be disbursed by the Fund only as the amount of increases described in paragraph (c)(1)(iii)(A) of this section is achieved.

(2) The Fund will allow an Applicant to utilize the option described in paragraph (c)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in achieving said increases to the specified amounts.

Subpart F—Applications for Assistance

§ 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the applicable Notice of Funds Availability published in the **Federal Register**. The Notice of Funds Availability will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The Notice of Funds Availability may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Take into consideration other factors as described in the applicable Notice of Funds Availability.

§ 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (e.g., in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an Applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI or a State-Insured Credit Union;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, the undisbursed balance of assistance, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable Notice of Funds Availability.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Consultation with Appropriate State Agencies.* Prior to providing assistance to a State-Insured Credit Union, the Fund may consult with, and consider the views of, the Appropriate State Agency.

(e) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable Notice of Funds Availability.

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency or Appropriate State Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Notice of Award.

(a) The Fund will generally signify its selection of an Applicant as an Awardee by delivering a signed notice of award to the Applicant. The notice of award will contain the general terms and conditions underlying the Fund's provision of assistance to an Awardee including, but not limited to, the requirement that an Awardee and the Fund enter into an Assistance Agreement.

(b) To become an Awardee under paragraph (a) of this section, an Applicant shall execute the notice of award and return it to the Fund.

(c) By executing a notice of award, an Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the Awardee's eligibility for funding, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the notice of award or take such other actions as it deems appropriate. Moreover, by executing a notice of award, an Awardee also agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the notice of award or take such other actions as it deems appropriate. An Awardee shall notify the Fund of information that an Awardee may reasonably believe may affect its eligibility or ability to achieve the objectives of its Comprehensive Business Plan as submitted to the Fund (such as changes in management).

(d) The Fund will notify an Awardee of either the Fund's termination of a notice of award or such other action(s) taken by the Fund under paragraph (c) of this section.

§ 1805.802 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner or an Affiliate is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement, if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Such performance goals may include measures that require an Awardee to:

(1) Be financially sound;

(2) Be managerially sound;

(3) Maintain appropriate internal controls; and/or

(4) Achieve specific lending, investment, and development service objectives. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency, as applicable. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement. Performance goals for State-Insured Credit Unions may be determined in consultation with the Appropriate State Agency, if deemed appropriate by the Fund.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the Fund's regulations, or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the

Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take such other actions as the Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.803 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability. At a minimum, a firm commitment must consist of a written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.804 Data collection and reporting.

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund that are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Data collection and reporting.* Each Awardee shall submit to the Fund, at least annually and within 180 days after the end of the Awardee's fiscal year, such information and documentation that will permit the Fund to review the Awardee's progress (and the progress of its Affiliates, Subsidiaries, and/or Community Partners, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The information and documentation shall include, but not be limited to, an Annual Report, which shall comprise the following components:

(1) *Financial Report:*

(i) All non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the Fund financial statements that have been reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-profit organizations (excluding Insured

CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A–133 *Audits of States, Local Governments and Non-Profit Organizations*, must also submit their A–133 audited financial statements to the Fund no later than 270 days after the end of the Awardee's fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A–133, *Audits of States, Local Governments and Non-Profit Organizations*, must submit to the Fund a statement signed by the Awardee's Authorized Representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A–133.

(ii) For-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year.

(iii) Insured CDFIs are not required to submit financial statements to the Fund. The Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the Fund copies of the financial statements that they submit to the Appropriate State Agency.

(iv) If multiple organizations sign the Assistance Agreement: The Awardee may submit combined financial statements and footnotes for the Awardee and other entities that signed the Assistance Agreement as long as the financial statements of each signatory are shown separately (for example, in combining financial statements).

(v) If the Assistance is in the form of a loan or a deposit: The Awardee must provide the Fund with financial statements annually throughout the term of the loan or deposit.

(vi) If the Assistance is in the form of an equity investment (common or preferred stock, secondary capital, certificate of deposit, partnership interest, or debentures): The Awardee must provide the Fund with financial statements annually for each year in which the Fund holds the equity investment.

(2) *Performance Goals Report/Annual Survey:* Performance Goals include performance goals and measures that are specific to the Awardee's application for funding.

(i) *Performance Goals Report:* The Awardee will submit to the Fund information through the Annual Survey that will inform the Fund of its compliance toward meeting the Performance Goals set forth in the Performance Goals Report.

(ii) *Annual Survey:* The Fund will use the Annual Survey to collect data by which to assess the Awardee's compliance toward meeting its Performance Goals and the impact of the CDFI Program and the CDFI industry. The Annual Survey is comprised of two components, the Institution-Level Report and the Transaction-Level Report.

(A) *Institution-Level Report.* The Institution-Level Report includes, but is not limited to, organizational, financial, portfolio and community development impact information and any other information that the Fund deems appropriate.

(B) *Transaction-Level Report.* The Transaction-Level Report includes, but is not limited to, specific data elements on each of the Awardee's loans and investments including, but not limited to, borrower location, loan/investment type, loan/investment amount, and terms. The Awardee must submit the Transaction-Level Report to the Fund at least annually but no more frequently than quarterly. If the Fund requires the Awardee to submit the Transaction-Level Report on a semi-annual or quarterly basis, the Fund will notify the Awardee of the due date for the submission of said report at least 60 days prior to the due date. Only Awardees that receive financial assistance awards are required to submit Transaction-Level Reports.

(3) *Financial Status Report:* The Financial Status Report is applicable only to Awardees that receive technical assistance awards and must be signed by the Awardee's authorized representative, and submitted to the Fund with the Annual Report. This form is only applicable to the technical assistance portion of the award.

(4) *Uses of Financial Assistance and Matching Funds Report:* This report describes the Awardee's use of its financial assistance award and its matching funds during its preceding fiscal year.

(5) *Explanation of Noncompliance:* Any Awardee that fails to meet a performance goal in its Performance Goals Report must submit to the Fund a narrative explanation.

(6) Awardees are responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually are completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Annual Surveys or Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided.

(7) The Fund's review of the progress of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(8) The Fund shall make reports described in this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies and Appropriate State Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by an Appropriate Federal Banking Agency or Appropriate State Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI, State-Insured Credit Union or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI, State-Insured

Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or Appropriate State Agency, or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be) shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be), and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (*http://www.whitehouse.gov/OMB/grants/index.html*); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.805 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.806 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.807 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The board of directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.808 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.809 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

§ 1805.810 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.811 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.812 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: December 1, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–23751 Filed 12–12–05; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the FY 2006 Funding Round of the Bank Enterprise Award (BEA) Program

ACTION: Change to NOFA inviting applications for the FY 2006 funding round of the BEA Program: Waiver of limitations on eligible Qualified Activities provided to certain CDFI Partners; Change of Application Deadlines; Increase of Award Amount; Modification of Application and Submission Information.

SUMMARY: On September 9, 2004, the Community Development Financial Institutions Fund (the ''Fund'') announced in a NOFA for the BEA Program (69 FR 54718) that BEA Program applicants that are also Community Development Financial Institutions (''CDFIs'') cannot receive credit under the BEA Program for financial assistance or Qualified Activities provided to CDFI Partners that are also FDIC-insured depository institutions or depository institution holding companies. Due to the recent occurrence of certain natural disasters, the Fund will waive this provision with regard to the FY 2006 funding round of the BEA Program for applicants providing financial assistance or Qualified Activities to CDFI Partners that are also FDIC-insured depository institutions or depository institution holding companies which have been directly affected by said disasters.

For the FY 2006 funding round, CDFIs may receive BEA Program credit for financial assistance or Qualified Activities provided to CDFI Partners that are FDIC-insured depository institutions or depository institution holding companies whose principal place of business is located in a county for which the Federal Emergency Management Agency (FEMA) has issued a ''major disaster declaration'' due to Hurricane Katrina on or after August 28, 2005 or due to Hurricane Rita on or after September 24, 2005 and made a determination that such county is eligible for both ''individual and public assistance.'' A list of the eligible counties may be found on the FEMA Web site (*http://www.fema.gov*).

Change of Application Deadlines: The NOFA published on September 9, 2004 for the BEA Program (69 FR 54718) also announced that the deadline for applications for the FY 2006 funding round is February 14, 2006.

This notice is to announce that the deadline for the submission of applications via Grants.gov for the FY 2006 funding round of the BEA Program has been changed to 5 p.m. EST on March 1, 2006. Paper attachments to the application must be received no later than 5 p.m. EST on March 6, 2006.

Increase of Award Amount: The NOFA published on September 9, 2004 for the BEA Program (69 FY 54718) also announced that the Fund expects that it may award approximately $6 million in appropriated funds for FY 2006 BEA Program awards.

This notice is to announce that the Fund now expects that it may award approximately $12 million for FY 2006 BEA Program awards. The Fund reserves the right to make awards in an amount less than or in excess of this amount subject to funding availability.

Modification of Application and Submission Information: The NOFA published on September 9, 2004 for the BEA Program (69 FY 54718) provided information regarding submission of applications in response to the NOFA.

This notice is to announce that for the FY 2006 funding round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund will post to its Web site at *http://www.cdfifund.gov* instructions for accessing and submitting an application through Grants.gov. The application instructions will be posted as soon as they are available and once the application materials are accessible through Grants.gov. The anticipated release date for the application instructions is January 6, 2006. Applicants are encouraged to start the registration process now at www.Grants.gov as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*.

All other information and requirements set forth in the September 9, 2004 NOFA for the BEA Program shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: The Fund will respond to questions and provide support concerning the NOFA and the funding application between the hours of 9 a.m. and 5 p.m. EST, starting the date of the publication of the NOFA through close of business February 27, 2006 for the FY 2006 funding round (2 business days before the application deadline).

The Fund will not respond to questions or provide support concerning the application after 5:00 p.m. EST on February 27, 2006 for the FY 2006 funding round, until after the application deadline of March 1, 2006.

Other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the BEA Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating Hot Zone or Distressed Community maps using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements (such as the eligibility of specific transactions or CDFI Partners), contact a member of the BEA Program staff, who can be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of the NOFA, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–9625, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Legal counsel support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review'', found on the Fund's Web site at *http://www.cdfifund.gov*.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: December 2, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–23749 Filed 12–12–05; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Tuesday,
December 13, 2005

Part IV

The President

Proclamation 7968—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2005

Federal Register
Vol. 70, No. 238
Tuesday, December 13, 2005

Presidential Documents

Title 3—

The President

Proclamation 7968 of December 9, 2005

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2005

By the President of the United States of America

A Proclamation

Americans believe that freedom is God's gift to every man and woman in the world. The Founders adopted our Constitution to secure the blessings of liberty for the people of the United States, and since 1789, generations of Americans have defended and advanced freedom in our Nation.

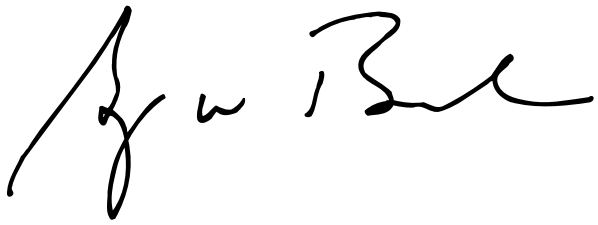
Throughout our history, the United States has also worked to extend the promise of liberty to other countries. We are continuing those efforts today. We are promoting democracies that respect freedom of speech, freedom of worship, and freedom of the press and that protect the rights of minorities and women. We are standing with dissidents and exiles against oppressive regimes and tyranny.

This year has seen great advances in the spread of democracy and human rights. In January, more than eight million Iraqi men and women braved threats of violence to vote for a provisional government. In October, Iraqis voted in even greater numbers to approve a draft constitution for their country, and on December 15, they will return to the polls to elect a Council of Representatives. Millions of Afghans voted in September in the first free legislative elections in Afghanistan in decades. Countries of the former Soviet bloc are emerging as thriving democracies. A free press is gaining ground in Kyrgyzstan, and civil institutions are being strengthened in Ukraine and Georgia. We have witnessed good progress this year, and America will continue this historic work to advance the cause of freedom.

We remain confident in this cause because we have seen the power of freedom to overcome the dark ideologies of tyranny and terror. Freedom enables men and women to live lives of dignity. And freedom gives the citizens of a nation confidence in a future of peace for their children and grandchildren. As we observe Human Rights Day, Bill of Rights Day, and Human Rights Week, we renew our commitment to building a world where human rights are respected and protected by the rule of law and where all people can enjoy freedom and dignity.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2005, as Human Rights Day; December 15, 2005, as Bill of Rights Day; and the week beginning December 10, 2005, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–24060
Filed 12–12–05; 11:18 am]
Billing code 3195–01–P

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4145/P.L. 109–116

To direct the Joint Committee on the Library to obtain a statue of Rosa Parks and to place the statue in the United States Capitol in National Statuary Hall, and for other purposes. (Dec. 1, 2005; 119 Stat. 2524)

H.R. 126/P.L. 109–117

To amend Public Law 89-366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore. (Dec. 1, 2005; 119 Stat. 2526)

H.R. 539/P.L. 109–118

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H.R. 2062/P.L. 109–122

To designate the facility of the United States Postal Service located at 57 West Street in Newville, Pennsylvania, as the ''Randall D. Shughart Post Office Building''. (Dec. 1, 2005; 119 Stat. 2541)

H.R. 2183/P.L. 109–123

To designate the facility of the United States Postal Service located at 567 Tompkins Avenue in Staten Island, New York, as the ''Vincent Palladino Post Office''. (Dec. 1, 2005; 119 Stat. 2542)

H.R. 3853/P.L. 109–124

To designate the facility of the United States Postal Service located at 208 South Main Street in Parkdale, Arkansas, as the Willie Vaughn Post Office. (Dec. 1, 2005; 119 Stat. 2543)

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