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Washington, DC 20002

RESERVATIONS: (202) 741-6008

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Presidential Documents

Title 3—

The President

Proclamation 8113 of March 16, 2007

National Poison Prevention Week, 2007

By the President of the United States of America

A Proclamation

In the 45 years since the first National Poison Prevention Week was proclaimed by President John F. Kennedy, many lives have been saved from unintentional poisoning through awareness efforts across our country. This week, we reaffirm our commitment to the safety of our fellow citizens and to guarding against accidental poisonings.

Protecting our children is a solemn and special responsibility, and we must all continue to work to reduce the number of poison-related injuries and deaths. I encourage parents to make homes safer by keeping toxic substances sealed and out of reach and by carefully reading the labels on medicines before giving them to children and on household products before using them around children. In addition, carbon monoxide alarms can help protect against carbon monoxide poisoning, which claims the lives of hundreds of Americans each year.

If a poisoning is suspected, citizens can reach their nearest Poison Control Center 24 hours a day, 7 days a week, by calling 1–800–222–1222. This number should be called immediately at the first sign of a suspected poison emergency. The Poison Prevention Week Council website, poisonprevention.org, can provide additional information about poison prevention. By staying informed, being proactive, and remaining vigilant, we can avoid poison exposure and save more lives.

To encourage Americans to learn more about the dangers of accidental poisonings and take appropriate preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 18 through March 24, 2007, as National Poison Prevention Week. I call upon all Americans to participate in appropriate activities this week and to learn how to prevent poisonings, especially among children.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of March, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–1413
Filed 3–20–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27438; Airspace Docket No. 07–AAL–03]

RIN 2120–AA66

Revocation of High Altitude Reporting Point; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the HERRY as an Alaskan high altitude reporting point. The FAA has determined that this reporting point should be removed from the National Airspace System (NAS), since the HERRY is no longer used as a high altitude reporting point.

DATES: *Effective Date:* 0901 UTC, May 10, 2007. The Director of **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

In October 2006, it was determined that the HERRY high altitude reporting point was no longer required to support the NAS and is no longer used by the FAA.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking the HERRY high altitude reporting point. Accordingly, since this action only involves a change in the legal description, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Alaskan high altitude reporting points are published in paragraph 7005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The high altitude reporting points listed in this document will be removed subsequently in the Order.

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 7005 Alaskan High Altitude Reporting Points.

* * * * *

Herry, AK [Removed]

* * * * *

Issued in Washington, DC on March 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–5065 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30542; Amdt. No. 3211]

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 March 21, 2007. 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 March 21, 2007.

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 March 9, 2007.

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:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

** * * Effective Upon Publication*

FDC date	State E	City	Airport	FDC No.	Subject
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3849	VOR/DME RWY 21, ORIG–B.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3850	VOR RWY 28R, AMDT 2A.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3851	ILS RWY 10R (CAT II), AMDT 32.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3852	ILS RWY 10R (CAT III), AMDT 32.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3853	LOC/DME RWY 21, AMDT 7B.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3854	ILS OR LOC RWY 10L, AMDT 2.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3855	ILS OR LOC RWY 10R, AMDT 32.
02/23/07	OR	PORTLAND	PORTLAND INTL	7/3856	VOR A, AMDT 9B.

[FR Doc. E7–5092 Filed 3–20–07; 8:45 am]
BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2004–0387; FRL–8112–6]

RIN 2070-AC12

Pesticides; Data Requirements for Conventional Chemicals; Final rule; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft final rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft final rule updates the data requirements in 40 CFR part 158 for the registration of conventional pesticide products. Besides providing the regulated community with clearer and more transparent information, the updated data requirements will enhance the development of health and environmental data to conduct scientifically sound chemical/hazard risk assessments to protect human health and the environment.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0387. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Vera Au, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: 703-308-9069; e-mail address: *au.vera@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft final rule to the U. S. Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to a producer or registrant of a pesticide product, including agricultural, residential, and industrial, but not including antimicrobial pesticides, biochemical pesticides, or microbial pesticides. This action may also affect any person or company who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration, that is, an import tolerance. This latter group may include pesticide manufacturers or formulators, importers of food, grower groups, or any person or company who seeks a tolerance. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15–day period.

III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

IV. Will this Notification be Subject to the Congressional Review Act?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

List of Subjects in 40 CFR Part 158

Environmental protection, Confidential business information, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2007.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E7–5162 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0579; FRL–8114–4]

Spinosad; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes and amends tolerances for residues of spinosad in or on certain commodities. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 21, 2007. Objections and requests for hearings must be received on or before May 21, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0579. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@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 an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0579 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 21, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0579, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 14, 2006 (71 FR 40105) (FRL–8077–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6E7068 and 3E6802) by the IR-4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.495 be amended by establishing a tolerance for residues of the insecticide spinosad, in or on hops at 22 parts per million (ppm) (under PP 6E7068) and amaranth, grain, stover at 10 ppm; cattle, meat at 2 ppm; sheep, meat at 2 ppm; goat, meat at 2 ppm; horse, meat at 2 ppm; poultry, meat at 0.1 ppm; cattle, fat at 50 ppm; sheep, fat at 50 ppm; goat, fat at 50 ppm; horse, fat at 50 ppm; poultry, fat at 1.3 ppm; milk at 7.0 ppm; milk, fat at 85 ppm; and egg at 0.3 ppm (under PP 3E6802).

Additionally, existing tolerances for meat byproducts which are currently based on residues in liver will be amended to establish separate liver tolerances and lower the meat byproducts tolerances which will now be based on residues in the kidney as follows: Cattle, meat byproducts, except liver at 5 ppm; sheep, meat byproducts, except liver at 5 ppm; goat, meat byproducts, except liver at 5 ppm; horse, meat byproducts, except liver at 5 ppm; poultry meat byproducts tolerance raised from 0.03 ppm and set at 0.1 ppm; cattle, liver at 10 ppm; sheep, liver at 10 ppm; goat, liver at 10 ppm; and horse, liver at 10 ppm (under PP 3E6802). That notice referenced a summary of the petition prepared by Dow AgroScience, the registrant, that is available in the docket for this rulemaking. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm* and *http://www.epa.gov/fedrgstr/EPA-PEST/2003/July/Day-30/p19357.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of spinosad in or on hop, dried cones at 22 ppm; amaranth, grain, stover at 10 ppm; cattle, meat at 2.0 ppm; sheep, meat at 2.0 ppm; goat, meat at 2.0 ppm; horse, meat at 2.0 ppm; poultry, meat at 0.10 ppm; cattle, fat at 50 ppm; sheep, fat at 50 ppm; goat, fat at 50 ppm; horse, fat at 50 ppm; poultry, fat at 1.30 ppm; milk at 7.0 ppm; milk, fat at 85 ppm; and egg at 0.30 ppm. Additionally, existing tolerances for meat byproducts which are based on residues in liver will be amended to establish separate liver tolerances and lower the meat byproducts tolerances which will now be based on residues in the kidney as follows: Cattle, meat byproducts, except liver at 5.0 ppm; sheep, meat byproducts, except liver at 5.0 ppm; goat, meat byproducts, except liver at 5.0 ppm; horse, meat byproducts, except liver at 5.0 ppm; poultry meat byproducts tolerance raised from 0.03 ppm and set at 0.10 ppm; cattle, liver at 10 ppm; sheep, liver at 10 ppm; goat, liver at 10 ppm; and horse, liver at 10 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by spinosad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the **Federal Register** of September 27, 2002 (67 FR 60923) (FRL–7199–5).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for spinosad used for human risk assessment can be found at *http://www.regulations.gov* in the following indices:

1. Docket ID number EPA–HQ–OPP–2006–0579, entitled *Application of Spinosad to Hops and as a Mosquito Larvicide*. Human Health Risk Assessment, dated August 2, 2006.

2. Docket ID number EPA–HQ–OPP–2005–0510, entitled *PPs 3E6699, 3E6780, and 4E6811. Application of Spinosad to Mint; Banana; Plantain; Peanut; Bulb Vegetables; Legume Vegetables; Forage, Fodder, and Straw of Cereal Grains (crop group 16); Grass Forage, Fodder, and Hay (crop group 17); and Nongrass Animal Feeds (crop group 18) and Application of Spinosad for Control of Fruit Flies*. HED Risk Assessment, dated September 15, 2005.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from spinosad in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

The Agency did not select a dose and endpoint for an acute dietary risk assessment due to the lack of toxicological effects of concern attributable to a single exposure (dose) in studies available in the database including oral developmental toxicity studies in rats and rabbits. In the acute neurotoxicity study, the NOAEL was 2,000 milligrams/kilograms/day (mg/kg/day), highest dose tested. An acute dietary exposure assessment is not required.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) version 2.03 (acute and cancer endpoints were not identified), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The chronic dietary analyses assumed average/projected percent crop treated (PPCT) estimates; projected percent head treated resulting from the dermal and premise treatments to ruminants, average field trial residues, and experimentally determined processing factors; and anticipated livestock residues. The chronic analysis assumed tolerance level residues for all crop, poultry, and egg commodities and anticipated residues for ruminant and milk commodities.

iii. *Cancer.* Spinosad has been classified as not likely to be carcinogenic in humans based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, a quantitative cancer exposure assessment was not performed.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Almond 5%; apple 30%; apricot 10%; avocado 5%; broccoli 40%; brussel sprout 15%; cabbage 30%; cantaloupes 10%; cauliflower 45%; celery 50%; cherry 25%; citrus 5%, excluding lemon, tangerine, and orange; collards 25%; corn, sweet 1%; cotton 5%; cucumber 20%; eggplant 15%; green, mustard 15%; green, turnip 5%; kale 30%; lemon 10%; lettuce 50%; nectarine 30%; orange 10%; peach 5%; pear 10%; pepper 35%; potato 5%; prune and plum 10%; spinach 30%; squash 10%; strawberry 35%; tangerine 10%; tomato 20%; and watermelon 5%.

Exposure analysis also incorporated projected percent ruminant head treated resulting from the registered dermal and premise use (dairy cattle 23% and beef cattle 31%, actual data are not available despite this being a registered use) and projected PCT for alfalfa of 1%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five except for those situations in which the average PCT is less than one. In those cases assumed not less than 1%, is used as the average and 2.5% is used the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available Federal, State, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

EPA estimates PPCT for a new pesticide Use for use in chronic dietary risk assessment by assuming that the PCT during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the dominant pesticide (i.e., the market leader pesticide with the greatest PCT) on that site over the three most recent pesticide usage surveys. Comparisons are only made among pesticides of the same pesticide types (i.e., the dominant insecticide on the use site is selected for comparison with the new insecticide). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses data from the USDA/NASS as the source for the PCT data because they are publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses other data which may include proprietary data.

The estimated PPCT, equivalent to the average PCT of the market leader is appropriate for use in the chronic dietary risk assessment. This method of estimating a PPCT for a new use of a registered pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use.

The predominant factors that bear on whether the estimated PPCT could be exceeded are whether the new pesticide use is more efficacious or controls a broader spectrum of pests than the dominant pesticides, whether there are

concerns with pest pressure as indicated in emergency exemption requests or other readily available information, and/or other factors based on analysis of additional information. All information readily available has been considered for spinosad on dairy cattle, beef cattle and alfalfa, and it is the opinion of the Agency that it is unlikely that actual PCTs for spinosad on these sites will exceed the corresponding estimated PPCTs during the next 5 years. For cattle, the estimated PPCTs likely would not be exceeded because spinosad generally is more expensive than the leading alternative insecticides although it has efficacy on the same order for the targeted pests. For alfalfa, its estimated PPCT likely also would not be exceeded because it is considerably more expensive than the leading alternative, and treatments for the targeted pest, armyworms, have been relatively small on average over the past 8 years.

The Agency believes that the three conditions listed in Unit III.C.1.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which spinosad may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for spinosad in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of spinosad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Typically, EPA evaluates the potential for human exposure to pesticides in drinking water through an assessment of available surface water and ground water monitoring data and modeling. For spinosad, no monitoring data were available for use in this drinking water assessment. Therefore, potential human exposures to spinosad were evaluated through modeling. Estimated exposure concentrations (EECs) in surface water were calculated using Pesticide Root Zone Model/Exposure Analyses Modeling System (PRZM/EXAMS). Ground water concentrations were modeled using Screening Concentration in Ground Water (SCI-GROW) (version 2.3). Drinking water residues were then incorporated into the DEEM-FCID™ into the food categories ''water, direct, all sources'' and ''water, indirect, all sources.''

Available environmental fate data indicate that the spinosad transformation products maintain the basic ring structure of spinosad and that combined spinosad and its transformation products are stable. Therefore, the Agency concluded that a total residue method should be used when estimating spinsad residues in water, and that spinosad and its transformation products are stable under the aqueous photolysis, aerobic soil metabolism, and anaerobic aquatic metabolism conditions.

Based on modeling results from surface water FQPA Index Reservoir Screening Tool (FIRST) and ground water SCI-GROW drinking water concentrations from application of spinosad to turf (4 x 0.4 pound active ingredient/acre (lb ai/acre); re-entry interval (RTI) = 7 days; highest registered/proposed rate excluding the mosquito larvicide use): The EECs of spinosad for acute exposures are 34.5 parts per billion (ppb), 10.5 ppb for chronic exposures, and 1.1 ppb for ground water. The dietary exposure assessment assumed a water concentration of 10.5 ppb for all water sources (direct and indirect). Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™).

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Spinosad is currently registered for use on numerous crops with tolerances for combined residues of spinosad ranging from 0.01 to 200 ppm, as well as residential, non-dietary sites including turf and ornamentals to control a variety of worms, moths, flies, beetles, midges, thrips, leafminers, and fire ants. Granular (homeowner) and EC (commercial applicators) formulations are registered. No dermal endpoints were identified and based on the granular formulation and low-vapor pressure for spinosad, residential handler/applicator and post-application dermal/inhalation exposure assessments were not conducted. The Agency concluded that there is a potential for toddler short-term, non-dietary, oral exposures (hand-to-mouth, object-to-mouth, ingestion of granulars, and soil ingestion). Since EPA did not identify an acute dietary endpoint, episodic ingestion of granulars was not assessed.

The Agency notes that the registered fruit fly bait application scenario permits application to non-crop vegetation and this use may result in residential exposures. Based on the application rates (fruit fly bait—0.0003 lb ai/acre and turf/ornamental—0.41 lbs ai/acre), EPA concludes that residential exposure resulting from the fruit fly application will be insignificant when compared to the exposure resulting from the turf/ornamental application. Therefore, quantitative analysis of the residential exposure resulting from the fruit fly bait application was not performed.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to spinosad and any other substances and spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by

EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat and rabbit fetuses to *in utero* and/or postnatal exposure to spinosad.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicological database for spinosad is complete for FQPA assessment.

ii. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with spinosad, and there is no evidence of increased susceptibility of young rats in the reproduction study with spinosad.

iii. There are no residual uncertainties identified in the exposure databases; the dietary food exposure assessment (chronic only; no acute endpoint was identified) is refined using anticipated residues calculated from field trial data and available PCT information.

iv. EPA has indicated that the dietary drinking water exposure is based on conservative modeling estimates.

v. EPA Residential Standard Operational Procedures (SOPs) were used to assess post-application exposure to children as well as incidental oral exposure of toddlers, so these assessments do not underestimate the exposure and risks posed by spinosad.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk*. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified for the general population or to the subpopulation females 13–50 years old. No acute risk is expected from exposure to spinosad.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to spinosad from food and water will utilize 37% of the cPAD for the U.S. population, 32% of the cPAD for all infants less than a year old, and 86% of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of spinosad is not expected. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Spinosad is currently registered for uses (turf and ornamental application) that could result in short-term residential exposures (incidental oral exposures to toddlers). This incidental oral exposure is combined with chronic dietary (food and water) exposure for determination of aggregate short-term exposure. The Agency uses chronic dietary exposure when conducting short-term aggregate assessments as it has been determined this will more accurately reflect exposure from food than will acute exposure.

Upon analyses of all available data, resulting aggregate MOEs are greater than or equal to 160. Therefore, the Agency concludes that short-term aggregate exposure to spinosad from food and residential uses is below the LOC.

4. *Aggregate cancer risk for U.S. population*. Spinosad has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, spinosad is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spinosad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

There is a practical method; liquid chromatography mass spectroscopy-accelerated climate prediction initiative (LCMS-ACPI) for detecting and measuring levels of spinosad in or on food with a limit of detection (0.002 ppm) that allows monitoring of food with residues at or above the level set for these tolerances. The method has undergone successful EPA laboratory validation.

Adequate enforcement methodology using high pressure liquid chromatography with ultraviolet detector (HPLC/UV) is available to enforce the tolerances in plants. Adequate livestock methods are available for tolerance enforcement. Method RES 94094 (GRM 95.03) is an HPLC/UV method suitable for determination of spinosad residues in ruminant commodities. Method GRM 95.03 has undergone successful independent laboratory validation (ILV) and EPA laboratory validation, and has been forwarded to the Food and Drug Administration (FDA) for inclusion in PAM Volume II. Method GRM 95.15 is another HPLC/UV method suitable for determination of spinosad residues in poultry commodities. This method has been forwarded to FDA for inclusion in PAM Volume II. Method RES 95114, an immunoassay method for determination of spinosad residues in ruminant commodities, underwent a successful ILV and EPA laboratory validation. It has been submitted to FDA for inclusion in PAM Volume II. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue limits (MRLs) have been established for residues of spinosad on the raw agricultural commodities associated with this action.

V. Conclusion

Therefore, tolerances are established for residues of spinosad. Spinosad is a fermentation product of *Saccharopolyspora spinosa*. The product consist of two selected active ingredients: Spinosyn A (Factor A: CAS# 131929–60–7) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS# 131929–63–0) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α*L*-manno-pyranosyl)oxy]-13-[[5(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on hop, dried cones at 22 ppm and amaranth, grain, stover at 10 ppm; cattle, meat at 2.0 ppm; sheep, meat at 2.0 ppm; goat, meat at 2.0 ppm; horse, meat at 2.0 ppm; poultry, meat at 0.10 ppm; cattle, fat at 50 ppm; sheep, fat at 50 ppm; goat, fat at 50 ppm; horse, fat at 50 ppm; poultry, fat at 1.3 ppm; milk at 7.0 ppm; milk, fat at 85 ppm; egg at 0.30 ppm; cattle, meat byproducts, except liver at 5.0 ppm; sheep, meat byproducts, except liver at 5.0 ppm; goat, meat byproducts, except liver at 5.0 ppm; horse, meat byproducts, except liver at 5.0 ppm; poultry meat byproducts tolerance raised from 0.03 ppm and set at 0.10 ppm; cattle, liver at 10 ppm; sheep, liver at 10 ppm; goat, liver at 10 ppm; and horse, liver at 10 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule 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. Thus, Executive Order 13175 does not apply to this final rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. The table in paragraph (a) of § 180.495 is amended by:

■ i. Alphabetically adding amaranth, grain, stover; cattle, liver; goat, liver; hop, dried cones; horse, liver; and sheep, liver.

■ ii. Revising the remainder of the entries listed.

The additions and revisions to the table in paragraph (a) read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *		
Amaranth, grain, stover	10	None
* * * * *		
Cattle, fat	50	None
Cattle, liver	10	None
Cattle, meat	2.0	None
Cattle, meat byproducts, except liver	5.0	None
* * * * *		
Egg	0.30	None
* * * * *		
Goat, fat	50	None
Goat, liver	10	None
Goat, meat	2.0	None
Goat, meat byproducts, except liver	5.0	None
* * * * *		
Hop, dried cones	22	None
Horse, fat	50	None
Horse, liver	10	None
Horse, meat	2.0	None
Horse, meat byproducts, except liver	5.0	None
* * * * *		
Milk	7.0	None
Milk, fat	85	None
* * * * *		
Poultry, fat	1.3	None
Poultry, meat	0.10	None
Poultry, meat byproducts	0.10	None
* * * * *		
Sheep, fat	50	None
Sheep, liver	10	None
Sheep, meat	2.0	None
Sheep, meat byproducts, except liver	5.0	None
* * * * *		

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[FR Doc. E7–4760 Filed 3–20–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0325; FRL–8117–9]

6-Benzyladenine; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide, 6-benzyladenine (6–BA), in or on pear when applied/used as a plant regulator. Valent BioSciences Corporation (Valent) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 6-benzyladenine.

DATES: This regulation is effective March 21, 2007. Objections and requests for hearings must be received on or before May 21, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0325. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@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 an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0325 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 21, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0325, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 19, 2006 (71 FR 20100) (FRL–8058–1), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7035) by Valent BioSciences Corporation (Valent), 870 Technology Way, Libertyville, IL 60048–6316. The petition requested that 40 CFR part 180 (specifically, § 180.1150) be amended by establishing an exemption from the requirement of a tolerance for residues of 6-benzyladenine (6–BA) in or on pear when applied at a rate of ≤182 grams of active ingredient per acre per season. The electronic docket (EPA–HQ–OPP–2006–0325) for this notice includes a summary of the petition prepared by the petitioner, Valent. Previously, on April 2, 2004 (69 FR 17304; FRL–7347–6), EPA issued a final rule granting a permanent exemption from the requirement of a tolerance for residues of 6–BA in or on pistachio when applied at a rate of ≤60 grams of active ingredient per acre per season, and the existing permanent tolerance exemption for apple was amended to expand the uses (by adding a post-bloom-applied stand-alone fruitlet thinner use) and increase the permissible application rate to ≤182 grams of active ingredient per acre per season. Both apple and the subject new crop, pear, are pome fruit and, therefore, botanically similar. The two crops are grown in the same climatic/geographic regions, and are similarly cultivated. For both crops, 6–BA is applied for the same purpose, on the same schedule, at the same application rate and with the same 86–day pre-harvest interval restriction. Based on these similarities, the Agency has determined for the purpose of establishing the requested tolerance exemption that previously-submitted and reviewed information and data supporting the current tolerance exemption for apple will apply equally to the new crop, pear. In submitting this petition, therefore, Valent is relying on information previously submitted in connection with seeking and obtaining the tolerance exemption for the expanded use of 6–BA on apple, which was summarized in the April 2, 2004, final rule, and also on new data summarized in the cited petition summary (i.e., PP 6F7035). New data submitted to the Agency by Valent on October 20, 2004 and summarized by the company in the current petition are a two-generation rat reproduction study, which is data not required for U.S. registration of this biochemical active ingredient, but rather was conducted to satisfy the registration requirements of other countries and submitted by the petitioner to augment the Agency's 6–BA data base.

In response to EPA's April 19, 2006 notice, no comments were submitted in accordance with the instructions for submitting comments set forth in the notice. However, one informal comment was received from a private citizen who opposed issuance of a final rule. The commenter expressed concern regarding the hazard associated with plant regulator use in general, stated the unsupported belief that more testing needs to be done, and was generally opposed to the establishment of an exemption from the requirement of a tolerance as proposed in the subject pesticide tolerance petition for 6–BA. The Agency understands and recognizes that some individuals believe that pesticides, which include plant regulators, should be banned completely. Notwithstanding such beliefs, pursuant to its authority under the FFDCA, EPA has conducted a comprehensive assessment of 6–BA and has concluded that there is a reasonable certainty that no harm will result from dietary exposure to this chemical when its use is limited by the specified maximum application rates.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption

from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of the FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of the FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... '' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological profile for 6–BA was published by the Agency in the June 1994 N6-Benzyladenine (synonymous with the subject active ingredient, 6-benzyladenine) Reregistration Eligibility Decision (RED) document (*http://www.epa.gov/oppsrrd1/REDs/old_reds/n6benzyladenine.pdf*). The summarized values and categories for the various, previously reviewed studies for the technical active ingredient are presented here.

1. *Acute toxicity*. Toxicity Category III was assigned to the acute oral toxicity study in the rat (lethal dose $(LD)_{50}$ = 1.3 grams/kilogram (g/kg)), and in the eye irritation study in the rabbit (moderate irritant). Toxicity Category IV (the least toxic category) was assigned to the acute dermal toxicity study in the rabbit (LD_{50} >5 g/kg), the acute inhalation toxicity study in the rat (lethal concentration $(LC)_{50}$ = 5.2 milligrams/liter (mg/L)), and to the dermal irritation study in the rabbit (slight irritant). Additionally, from a dermal sensitization study in the guinea pig, it was determined that 6–BA is not a dermal sensitizer. There have been no reported incidents of hypersensitivity directly linked to 6–BA. Nevertheless, to comply with section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), any incident of hypersensitivity associated with the use of this pesticide must be reported to the Agency.

2. *Genotoxicity*. From three mutagenicity studies (Ames test, mouse micronucleus assay, and unscheduled DNA synthesis assay in the rat), it was determined that 6–BA is not mutagenic.

3. *Developmental toxicity*. The no observed adverse effect levels (NOAEL) and the lowest observed adverse effect levels (LOAEL) for maternal and developmental toxicity in rats, respectively, were found to be 50 and 175 milligrams/kilogram body weight/day (mg/kg bwt/day), respectively.

4. *Subchronic toxicity*. For rats of both sexes, the NOAEL was approximately 111 mg/kg bwt/day and the LOAEL was approximately 304 mg/kg bwt/day.

In addition to the previously reviewed studies discussed above, a two-generation rat reproduction study was relied upon by Valent to support the current petition to establish an exemption from the requirement of a tolerance for residues of 6–BA in or on pear. The lowest-LOAEL for parental systemic toxicity of technical 6–BA is 750 ppm (58.6–70.4 mg/kg bwt/day) and is based on reduced body weight and weight gain in F_0 and F_1 male rats[1].The NOAEL is 400 ppm (31.5–37.5 mg/kg bwt/day)[1] . This systemic adult endpoint was used in the dietary risk assessment. Although the systemic endpoint is similar to that used in previous occupational risk assessments, the previous toxicological endpoint (40 mg/kg bwt/day) has been modified to more precisely reflect the composition of test diets, rat body weights, and food consumption estimates[1].

Because only systemic and no reproductive effects were observed, the LOAEL for reproductive toxicity of technical 6–BA in rats could not be determined. The NOAEL, therefore, is >1,500 ppm (115.7–144.2 mg/kg bwt/day for males and 133.0–139.2 mg/kg bwt/day for females), the highest dose tested[1].

The LOAEL for offspring toxicity of technical 6–BA in rats is 750 ppm (66.7–68.1 mg/kg bwt/day) and is based on decreased body weight and weight gain in F_1 and F_2 male and female pups. The NOAEL is 400 ppm (35.8–36.0 mg/kg bwt/day)[1].

Uncertainty factors for inter- and intra-species variation (10X each) and subchronic to chronic extrapolation (3X) were used to modify the toxicity NOAEL.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Apple field trials yielded acceptable magnitude of the residue data. In apples, residues of 6–BA were consistently near the limit of quantitation (LOQ). However, the residue levels for processed commodities did not increase relative to those on the raw commodity, and were below the LOQ. The apple field data are adequate to support the tolerance exemption for pear, limited by a maximum application rate of ≤182 grams of active ingredient per acre per season, because of the shared physical, compositional and cultural characteristics of the two botanically similar pome fruits, which also are grown in the same climatic/geographic regions. The proposed use pattern; low application rate, frequency and timing; and 86–day pre-harvest interval are identical for apple and pear. Because application precedes harvest by approximately 2.5 months for apple and pear, the potential for dietary exposure is reduced. Due to the low anticipated dietary intake of 6–BA residues relative to the chronic and acute population adjusted doses (see Unit VI.), and the

[1] USEPA. N6-Benzyladenine: Review of Information for an Exemption from the Requirement of a Tolerance. K. R. Carlson to D. Greenway; December 5, 2006.

fact that actual exposure will probably be considerably less because the dietary exposure analysis was based on worst-case assumptions (such as conservatively assuming: That 100% of the crop is treated, that non-detected or <LOQ residue concentrations are present, and that chronic exposure from the few seasonal applications made 60–86 days before harvest could occur), it is highly unlikely that the proposed new use of 6–BA on pear will result in adverse effects to human health.

2. *Drinking water exposure*. The proposed use on pear is not expected to add potential exposure to residues of 6–BA in drinking water. Soil leaching studies have suggested that 6–BA is relatively immobile, adsorbing to sediment, and is degraded in the soil. Migration to potable water resources, therefore, is highly improbable. However, any residues that do reach surface waters from field runoff should quickly adsorb to sediment particles and be partitioned from the water column. 6-Benzyladenine also has low solubility in water, 76 ±2 mg/L at 20° C, and detections in ground water are not expected. Together, these data indicate that residues are not expected in drinking water.

B. Other Non-Occupational Exposure

The potential for non-dietary, non-occupational exposure to 6–BA residues for the general population, including infants and children, is unlikely because the uses, both those currently allowed and the one currently being established, are limited to applications in certain tree fruit and nut tree orchards. Additionally, because 6–BA is a naturally-occurring cytokinin plant regulator (having been detected in all higher plants tested for its presence), it is a normal part of the human diet. Moreover, the proposed use rates are well below the toxicity NOAELs (see Unit III.), and the residues resulting from applications made in accordance with the proposed use rates indicate dietary exposures that are <1.0% of the chronic and acute population adjusted doses. Therefore, not only is there a great likelihood of prior exposure for most, if not all, individuals to 6–BA, due to its natural presence in food crops, the data submitted also demonstrate that any incremental increased exposure due to the proposed use would be negligible due to the lack of residue in comparison with the toxicity NOAELs.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children.

EPA does not have, at this time, available data to suggest whether 6–BA has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 6–BA and any other substances and 6–BA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 6–BA has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

VI. Determination of Safety for U.S. Population, Infants and Children

A. U.S. Population

When assessing the contributions of apple and pistachio, the Agency's analysis estimated that the chronic exposures for the overall U.S. population was 0.000002 mg/kg/day (<1.0% of the chronic population adjusted dose (cPAD))[1]. Similarly, the acute dietary estimated exposure was 0.000069 mg/kg/day (<1.0% of the acute population adjusted dose (aPAD)) for the overall U.S. population. Critical exposure commodity analysis showed that apple juice contributed the most to dietary exposure for the overall population. Dietary exposure to 6–BA residues in or on pear did not add significantly to the current dietary exposure to 6–BA from its use in or on apple or pistachio. Due to the low anticipated dietary intake of 6–BA residues relative to the chronic and acute population adjusted doses, and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was made based on worst-case assumptions (such as conservatively assuming: That 100% of the crop is treated, that non-detected or <LOQ residue concentrations are present, and that chronic exposure from the few seasonal applications made 60–86 days before harvest could occur), the Agency is reasonably certain that no dietary harm will result from aggregate exposure to 6–BA residues, including all anticipated dietary exposures (including the proposed new use of 6–BA on pear) and all other exposures for which there is reliable information.

B. Infants and Children

Section 408(b)(2)(C) of the FFDCA provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In the case of 6–BA, the safety factor was reduced from 10X to 3X based on adequate data from a new 2-generation rat reproduction study, and from a rat developmental toxicity study, neither of which demonstrated unique fetal susceptibility (i.e., fetal or neonatal effects occurred only at maternally toxic doses)[1]. Additionally, genotoxicity and mutagenicity tests were negative. EPA did not reduce the uncertainty factor any further, however, because of the lack of a developmental toxicity study in a second species, and the resulting residual uncertainties for 6–BA-induced pre-/post-natal toxicity. The analysis estimated that the chronic exposures for the most highly exposed subgroup, non-nursing infants, was 0.000012 mg/kg/day (<1.0% of the cPAD). The acute dietary estimated exposure was 0.000361 mg/kg/day (<1.0% of aPAD) for the most highly exposed subgroup, non-nursing infants. Critical exposure commodity analysis showed that apple juice contributed the most to dietary exposure for all infants. Due to the low anticipated dietary intake of 6–BA residues relative to the chronic and acute PAD, and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was made based on worst-case assumptions (such as conservatively assuming: that 100% of the crop is treated, that non-detected or <LOQ residue concentrations are present, and that chronic exposure from the few seasonal applications made 60–86 days before harvest could occur), it is reasonably certain that no dietary harm will result to infants and children from aggregate exposure to residues of 6–BA

resulting from all currently-registered uses, as well as from the proposed new use of 6–BA on pear.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, 6–BA may be subjected to additional screening and/or testing to better characterize any possible effects related to endocrine disruption. Based on available data, no endocrine system-related effects have been identified with consumption of 6–BA. To date, there is no evidence to suggest that 6–BA affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Methods

The Agency is establishing an exemption from the requirement of a tolerance for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for 6–BA. Nonetheless, analytical methods for apple (a pome fruit botanically similar to the new crop, pear), both raw agricultural and processed commodities, and for pistachio have been developed and submitted by the registrant. The analytical method for apple is expected to be fully applicable (have the same sensitivity) to pear because the two pome fruits are physically and compositionally comparable, and therefore should present similar sequestration and matrix interference characteristics.

C. Codex Maximum Residue Level

Currently, there are no Codex, Canadian or Mexican maximum residue levels for residues of 6–BA in or on pear.

VIII. Conclusions

Based on the toxicology information submitted and reviewed previously and summarized in the June 1994 N6-Benzyladenine RED, in combination with the newly submitted two generation rat reproduction study and other information available to the Agency, there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of 6–BA under reasonably foreseeable circumstances, when 6–BA is used as a biochemical pesticide in accordance with its label and good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the data submitted previously and summarized in the RED, as well as that data submitted to support this tolerance exemption, demonstrating negligible dietary exposure in comparison with the toxicity NOAELs. As a result, EPA is establishing an exemption (albeit, limited by a maximum application rate) from the tolerance requirements pursuant to section 408(c) and (d) of the FFDCA for residues of 6–BA in or on pear.

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule

does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

X. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1150 is revised to read as follows:

§ 180.1150 6-Benzyladenine; exemption from the requirement of a tolerance.

The biochemical plant regulator 6-benzyladenine (6–BA) is exempt from the requirement of a tolerance in or on apple and pear when applied at a rate of ≤182 grams of active ingredient per acre per season, and in or on pistachio when applied at a rate of ≤60 grams of active ingredient per acre per season.

[FR Doc. 07–1386 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0208; FRL–8117–1]

Thifensulfuron Methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of thifensulfuron methyl in or on rice, grain; rice, straw; sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover. E. I. DuPont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 21, 2007. Objections and requests for hearings must be received on or before May 21, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0208. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Vickie Walters, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5704; e-mail address: *walters.vickie@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 an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0208 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 21, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0208, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 14, 2006 (71 FR 40103) (FRL–8058–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6889) by E.I. Dupont de Nemours and Company, Inc., Laurel Run Plaza, P. O. Box 80038, Wilmington, DE 19880–0038. The petition requested that 40 CFR 180.439(a) be amended by establishing tolerances for residues of the herbicide thifensulfuron methyl, (methyl-3-[[[[[(4-methoxy-6-methyl-1,3,5,-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate, in or on grain sorghum (forage, grain, stover) and rice (grain and straw) at 0.05 parts per million (ppm). That notice referenced a summary of the petition prepared by E.I. DuPont de Nemours and Company, Inc, the registrant, that has been included in the public docket. A comment was received in response to the notice of filing from B. Sachau, 15 Elm Street, Florham Park, NJ 07932. The comment and EPA's response is discussed in Unit IV.C.4.

During the course of the review the Agency decided to update the commodity listings to agree with current terminology. The commodities are listed as rice, grain; rice, straw; sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of thifensulfuron methyl, (methyl-3-[[[[[(4-methoxy-6-methyl-1,3,5,-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate, on rice, grain at 0.05 part per million (ppm); rice, straw at 0.05 ppm; sorghum, grain, forage at 0.05 ppm; sorghum, grain, grain at 0.05 ppm and sorghum, grain, stover at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by thifensulfuron methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in Unit III.A. of the final rule published in the **Federal Register** of September 17, 2004 (69 FR 55975)(FRL–7679–).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL

was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for thifensulfuron miethylused for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIFENSULFURON METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age)	NOAEL = 159 milligrams/kilograms/day (mg/kg/day). UF = 100 ..... Acute RfD = 1.59 mg/kg/day	Special FQPA SF = 1x ..... acute Population adjusted dose (aPAD) = acute Referenced dose (RfD). Special FQPA SF = 1.59 mg/kg/day.	Developmental oral toxicity study in rats. LOAEL = 725 mg/kg/day based on decreased mean body weight and increased incidence of small renal papillae
Chronic dietary (All populations)	NOAEL = 7 mg/kg/day ..... UF = 100 Chronic RfD = 0.07 mg/kg/day.	Special FQPA SF = 1x chronic Population adjusted dose (cPAD) = chronic RfD. Special FQPA SF = 0.07 mg/kg/day.	90 Day Oral Toxicity in Rat LOAEL = 177 mg/kg/day based on decreased body weight and body weight gain in both males and females, and increased spleen weights in males

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.439) for the residues of thifensulfuron methyl, in or on a variety of raw agricultural commodities. No tolerances for meat, milk, poultry and egg are established. Risk assessments were conducted by EPA to assess dietary exposures from thifensulfuron methyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

The acute dietary analysis was performed for the population subgroup Females 13–49 only. This subgroup is the only one for which an acute dietary endpoint was identified. In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intakes Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100% crop treated (PCT). No empirical processing factors were used. A DEEM (Version 7.81) default processing factor was used for corn syrup. Anticipated residues or estimates of PCT were not used.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100 PCT. No empirical processing factors were used. A DEEM (Version 7.81) default processing factor was used for corn syrup. Anticipated residues or estimates of PCT were not used.

iii. *Cancer*. Thifensulfuron methyl is classified as ''not likely to be carcinogenic to humans'' based on acceptable chronic/carcinogenic studies in rats and mice. Therefore, a cancer exposure assessment was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for thifensulfuron methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of thifensulfuron methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed/models/water/index.htm*.

Based on the FQPA Index Reservior Screening Tool (FIRST) and Screening concentration in ground water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of thifensulfuron methyl for acute exposures are estimated to be 3.9 parts per billion (ppb) for surface water and 0.27 ppb for ground water. The EDWCs for chronic exposures are estimated to be 1.5 ppb for surface water and 0.27 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID). For the acute dietary risk assessment the annual average concentration in surface water of 3.9 ppb was used. For the chronic dietary risk assessment the annual average concentration in surface water of 1.5 ppb was used.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Thifensulfuron methyl is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to thifensulfuron methyl and any other substances and thifensulfuron methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that thifensulfuron methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence in the developmental study in rabbits and two generation reproduction study in rats of increased quantitative or qualitative susceptibility of the offspring after *in utero* or post-natal exposure to thifensulfuron methyl. The acceptable developmental toxicity in rats revealed increased quantitative susceptibility of the fetus after *in utero* exposure. Nonetheless there are no residual uncertainties for pre and post natal toxicity because the fetal toxicity seen in the developmental rat study has been well-characterized and the NOAEL relied upon to calculate the chronic RfD is more than an order of magnitude lower than the NOAEL from the developmental rat study.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for thifensulfuron methyl is complete. Although the impact of thifensulfuron methyl on the nervous system has not been specifically evaluated in neurotoxicity studies, available toxicology studies in four species (rat, mouse, dog, and rabbit) do not indicate a neurotoxic mode of action for this chemical and there are no concerns from potential developmental neurotoxicity. Therefore, a developmental neurotoxicity is not required for thifensulfuron methyl.

ii. As discussed in above Unit III.D.2., there are no concerns or residual uncertainties for pre and/post natal toxicity.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food assessments were performed based on 100 PCT and tolerance level residues. Conservative ground water and surface water modeling estimates were used in the risk assessments. These assessments will not underestimate the exposure and risks posed by thifensulfuron methyl.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. The acute aggregate risk assessment is provided for females 13–50 years old only. The existing data showed no indication that thifensulfuron methyl could cause adverse effects in the general population based upon a single dose. Thus there is no concern for acute dietary exposure to the general population. Using the exposure assumptions discussed in Unit III.C. for acute exposure, the acute dietary exposure from food and water to thifensulfuron methyl will occupy 0.03% of the aPAD at the 95% percentile of exposure for females 13 years and older. EPA does not expect the aggregate exposure to exceed 100% of the aPAD,

2. *Chronic risk*. Using the exposure assumptions described in Unit III.C. for chronic exposure, EPA has concluded that exposure to thifensulfuron methyl from food and water will utilize <1 % of the cPAD for the U.S. population, <1% of the cPAD for all infants less than 1 year old, and <1% of the cPAD for children 3-5 years old. There are no residential uses for thifensulfuron methyl that result in chronic residential exposure to thifensulfuron methyl. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thifensulfuron methyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thifensulfuron methyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Thifensulfuron methyl is classified ''as not likely to be a human carcinogen.'' Therefore, EPA does not expect thifensulfuron methyl will pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to thifensulfuron methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (including high performance liquid chromatography (HPLC) with photo-conductivity detection and liquid chromatography with detection via electrospray mass spectroscopy) are available to enforce the tolerance

expression. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex Maximum Residue Levels (MRLs) for residues of thifensulfuron methyl. Canadian and Mexican MRLs have been established for residues of thifensulfuron methyl for several crops. However no MRLs have been established for sorghum, grain, forage; sorghum, grain, grain; sorghum, grain, stover; rice, grain; or rice, straw.

C. Response to Comments

A comment for thifensulfuron methyl was received from Ms. B. Sachau, 15 Elm Street, Florham Park, NJ 07932. Ms. Sachau stated that any residue of this product in food was dangerous and questioned the availability of testing for this chemical in combination with thousands of other chemicals used in America today.

EPA generally does not require companies to conduct studies to evaluate the potential for synergistic effects from exposure to combinations of chemical exposure. Such testing rarely shows any kind of interaction (synergistic or antagonistic), and there are a nearly infinite number of possible combinations, making the cost of indiscriminate testing prohibitively high.

Because synergism does not occur often, the scientific community believes that exposure to multiple chemicals is best assessed by looking at the effects caused by each chemical individually. The only exception to that is when people are exposed to multiple chemicals that share a common mechanism of toxicity. Then the effects of exposure to multiple chemicals are expected to be additive, adjusted for the relative toxicity of different chemicals. This is done through Agency cumulative risk assessments which are discussed in Unit III.C.4. of this document. Ms. Sachau did not submit any scientific evidence that supported a revision of Agency conclusions.

Based on the Agency risk assessments discussed in Unit III.E. of this document the Agency has concluded that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to thifensulfuron residues. Ms. Sachau did not submit any scientific evidence that supported a revision of Agency conclusions.

V. Conclusion

Therefore, the tolerances are established for residues of thifensulfuron methyl, (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5,-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate,on rice, grain at 0.05 part per million (ppm); rice, straw at 0.05 ppm; sorghum, grain, forage at 0.05 ppm; sorghum, grain, grain at 0.05 ppm and sorghum, grain, stover at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

VII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.439 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.439 Thifensulfuron methyl; Tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Rice, grain	0.05
Rice, straw	0.05
Sorghum, grain, forage	0.05
Sorghum, grain, grain	0.05
Sorghum, grain, stover	0.05
* * *	* *

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[FR Doc. E7–4762 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024–AC84

Native American Graves Protection and Repatriation Act Regulations—Future Applicability

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule relates to one section of the regulations implementing the Native American Graves Protection and Repatriation Act of 1990 (''the Act''). This section outlines procedures for the future applicability of the Act to museums and Federal agencies.

DATES: *Effective Date:* This rule is effective April 20, 2007.

ADDRESSES: Mail inquires to Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street, NW. (2253), Washington, DC 20240–0001. Telephone: (202) 354–1479. Fax: (202) 371–5197.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *jerry_case@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*) was signed into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to promulgate regulations to carry out provisions of the Act.

Final regulations implementing the Act were published in the **Federal Register** on December 4, 1995, (60 FR 62138), and codified as 43 CFR part 10. Five sections were reserved in the final regulations with the intention that they would be published in the future. One of the five reserved sections, designated § 10.13, was set aside to clarify the applicability of the Act to museums and Federal agencies following the statutory deadlines for completion of summaries and inventories.

The Act requires museums and Federal agencies, as defined by the Act, to provide summaries of their collections to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collection by November 16, 1993. The Act also requires museums and Federal agencies to prepare, in consultation with culturally affiliated Indian tribes and Native Hawaiian organizations, inventories of human remains and associated funerary objects by November 16, 1995. The Act also requires museums and Federal agencies to submit notices for publication in the **Federal Register** prior to repatriation.

Four types of situations are anticipated where a museum or Federal agency may fall under the jurisdiction of the Act after the statutory deadlines: (1) The museum or Federal agency receives new collections; (2) a previously unrecognized Indian group is recognized as an Indian tribe; (3) an institution in possession or control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony receives Federal funds for the first time; and (4) the museum or Federal agency revises a decision previously published in the **Federal Register**. In each case, this final rule establishes deadlines for the required summaries, inventories, or notices.

This final rule provides museums and Federal agencies with a uniform set of procedures to ensure that lineal descendants, Indian tribes, and Native Hawaiian organizations know of the existence and location of cultural items with which they are affiliated and which they may be able to repatriate. These procedures facilitate the existing repatriation provisions of the Act, and are essential to the continued effectiveness of the Act.

Preparation of the Rulemaking

The proposed rule to clarify future applicability of the Act was published in the **Federal Register** on October 20, 2004 (69 FR 61613). Public comment was invited for a 90-day period, ending on January 18, 2005. The proposed rule was also posted on the National NAGPRA Program Web site. The Native American Graves Protection and Repatriation Review Committee commented on the proposed rule at its November 2, 2004 teleconference. In addition, ten written comments were received during the comment period, representing three museums; three national scientific or museum organizations; two Federal agencies; one national Native American organization; and one non-Federally recognized Native American group. Comments addressed all sections of the proposed rule. All comments were fully considered when revising the proposed rule as a final rulemaking.

Changes in Response to Public Comment

Subsection 10.13(a)

This subsection outlines the purpose of the proposed rule to clarify the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.

Comment 1: Six commenters questioned whether the Department of the Interior has authority to promulgate regulations establishing new deadlines for completion of summaries and inventories after those specified in the Act.

Our Response: Three conditions must be satisfied before the Secretary can be said to have sufficient authority to extend the reporting requirements of the Act beyond that expressly provided: (1) The cultural items affected by the rule's new reporting requirements must be subject to repatriation or disposition under the existing terms of the Act; (2) Congress must have delegated to the Secretary the authority to create regulations to implement the terms of the Act; and (3) the regulations crafted by the Secretary must constitute a legitimate and lawful exercise of the implementation authority delegated by Congress.

The scope of cultural items subject to repatriation under Section 7 of Act is best discerned from the language of the statute itself. Section 7 addresses the ''repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums.'' The only limitations of Section 7 are by item type (Native American human remains and objects), party (Federal agencies and museums), and the party's interest in the cultural item (possessed or controlled). Section 7 establishes procedures by which all cultural items in the possession or control of Federal agencies and museums can be repatriated upon demand. Subsections (a)(1) and (a)(2) provide conditions for the repatriation of cultural items listed in the inventories and summaries completed according to Sections 5 and 6 of the Act, respectively, to known lineal descendants or culturally affiliated Indian tribes and Native Hawaiian organization. Subsections (a)(4) and (a)(5) provide conditions for the repatriation of cultural items not listed in such inventories or summaries. Subsection (c) provides additional standards for repatriating unassociated funerary objects, sacred objects, and objects of cultural patrimony separate and apart from the standards in subsection (a). When added together, these individual provisions in Section 7 establish procedures by which all cultural items in the possession or control of Federal agencies and museums can be repatriated upon demand. Thus, the scope of items subject to repatriation under Section 7 extends to all NAGPRA-defined ''cultural items'' that are ''possessed or controlled by Federal agencies and museums.''

There are three Congressional grants of authority that give the Secretary the power to issue regulations to implement the Act. Section 13 of the Act specifically directs the Secretary to promulgate regulations to carry out the Act. In addition, 25 U.S.C. 2 and 9 give the President and his subordinates a broad, general authority to issue regulations necessary to manage Indian affairs and implement legislation related to Indians. These three grants of legislative authority lead us to conclude that Congress has given the Secretary sufficient power to promulgate regulations to implement the various provisions of the Act, including the provisions governing the repatriation of cultural items in Section 7.

The Supreme Court established the test for assessing the propriety of an exercise of rulemaking authority in *Chevron* v. *NRDC,* 467 U.S. 837 (1984). ''The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress. If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.'' *Chevron* v. *NRDC,* 467 U.S. 837, 843.

The Act does not clearly indicate how museums that become subject to the Section 7 requirements after the expiration of the statutory reporting requirements are to disseminate information about cultural items in their possession or control to potential repatriation claimants. The Act also does not set clear procedures for Indian tribes or Native Hawaiian organizations to learn of cultural items for which they have a right to repatriate under Section 7. This rule facilitates the repatriation process, a core function of the Act, by requiring museums and Federal agencies to prepare and disseminate information regarding their newly acquired or newly regulated collections. It addresses a gap left in the statute regarding how the Section 7 repatriation process is to be implemented once the statutory reporting requirements end. Congress expressly delegated to the Secretary, through Section 13 of Act, and through 25 U.S.C. 2 and 9, the authority to fill such gaps. Without the dissemination of information about the collections held by Federal agencies and museums as envisioned by the proposed rule, the repatriation of cultural items under Section 7 would be frustrated. Without such information, lineal descendants and Indian tribes may not otherwise learn about the existence or location of cultural items to which they have rights under the statute. Furthermore, the process provided in this rule is consistent with the Secretary's longstanding interpretation that additional procedures were necessary for implementing the summary and inventory provisions after the statutory deadlines. The present section was initially proposed as a reserved section on May 28, 1993, (58 FR 31127), and finalized as a reserved section on December 4, 1995, (60 FR 62115). In its December 21, 2004 Chief's Directive, the Fish and Wildlife Service directed its officers to comply with Section 7's repatriation process for all cultural items ''that are seized or in the possession of Service officers as a result of Service investigations.'' The National Park Service, as well, has issued letters stating that a museum ''*does* have an obligation to update its summaries and inventories to reflect newly acquired collections and newly recognized Indian tribes,'' and that cultural items that came into a museum's possession after January 1, 2000, are subject to the Act [Letter from Francis P. McManamon, Departmental Consulting Archaeologist, National Park Service, to Michael Sims, Middle Tennessee Support Group, American Indian Movement (Jul. 31, 1997) (emphasis in original)]. These administrative statements demonstrate the Department's understanding that the Section 7 repatriation process applies, without limitation, to all cultural items within the possession or control of a Federal agency or museum. We conclude that facilitating the repatriation process by administratively requiring the dissemination of information about cultural items subject to repatriation is neither arbitrary, capricious, nor manifestly contrary to the Act, but instead constitutes a reasoned approach to implementing the Section 7 of the Act. As such, we find that this rule constitutes a proper exercise of the Secretary's delegated rulemaking authority.

Comment 2: One commenter thought the proposed deadline for summaries and inventories were reasonable as long as the Act's recognition of good faith

effort when those deadlines cannot be met continues to apply.

Our Response: The Act explicitly authorizes the Secretary of the Interior to extend the inventory time requirement for any museum which has made a good faith effort but has been unable to complete the inventory process [25 U.S.C. 3003(c)]. The statutory provisions are reiterated in § 10.9 of the regulations, which were incorporated by reference in the proposed future applicability rule. However, additional text has been added to § 10.13(b)(1)(ii) and (c)(1)(ii) to explicitly state that inventory extensions are available to museums that have made a good faith effort but have been unable to complete the inventory process.

Comment 3: The drafters noted that the consultation requirements in § 10.13(b)(i), (b)(ii), (d)(i), and (d)(ii) of the proposed rule were limited to ''culturally affiliated'' Indian tribes and Native Hawaiian organizations while the consultation requirements in § 10.8(c) and 10.9(b) applies to a broader group of Indian tribes and Native Hawaiian organizations.

Our Response: Section 10.8(c) and 10.9(b) require museums and Federal agencies to consult with Indian tribe officials and traditional religious leaders: (1) From whose tribal lands cultural items originated; (2) that are, or are likely to be, culturally affiliated with cultural items; and (3) from whose aboriginal lands cultural items originated. The drafters intend the same consultation standards to apply to consultation situations covered in this rule. The text has been revised to require consultation with ''affiliated'' Indian tribes and Native Hawaiian organizations, to include the range specified in § 10.8(c) and 10.9(b).

Subsection 10.13(b)

This subsection establishes deadlines for completing summaries and inventories of collections received after expiration of the statutory deadlines.

Comment 4: One commenter requested clarification as to whether the term ''collection'' can refer to a single human remain, funerary object, sacred object, or object of cultural patrimony.

Our Response: The summary and inventory requirements of the Act apply to ''holdings or collections'' of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony [25 U.S.C. 3003(a) and 3004(a)]. The phrase ''holding or'' has been added before ''collection'' throughout the section to clarify that the summary and inventory requirements of the Act apply to both single and multiple human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Comment 5: One commenter recommended exempting a museum or Federal agency from completing a summary or inventory of a newly acquired collection if that collection had been previously reported in a summary or inventory by another museum or Federal agency.

Our Response: The drafters do not intend to require museums or Federal agencies to complete a summary or inventory of a holding or collection if it had been previously reported in a summary or inventory by another museum or Federal agency. However, the receiving museum or Federal agency does have an obligation to notify lineal descendants and culturally affiliated Indian tribes identified in the earlier summary or inventory of the change in possession and control of the holding or collection. Text has been added to clarify that a museum or Federal agency may rely upon a previously prepared summary or inventory. The receiving museum or Federal agency must provide a copy of the previously prepared summary or inventory to all affiliated Indian tribes or Native Hawaiian organizations, along with notification that the museum or Federal agency has assumed possession and control of the holding or collection.

Comment 6: One commenter recommended defining ''substantive change.''

Our Response: The term ''substantive change,'' along with the example in the following sentence, has been replaced with text indicating that publication of a notice in the **Federal Register** is not required if there is no change in the number or cultural affiliation of the cultural items listed in the previous notice.

Comment 7: One commenter recommended allowing a museum or Federal agency to proceed with repatriation of newly found fragments from previously repatriated cultural items regardless of whether the previous repatriation occurred prior to or after establishment of the Act.

Our Response: The Act may not be construed to delay actions on repatriation requests that were pending on November 16, 1990 [25 U.S.C. 3009 (2)]. Newly found fragments from cultural items that were repatriated prior to November 16, 1990 may be repatriated to the same party without publication of a notice in the **Federal Register**. Newly found fragments from cultural items that were repatriated after November 16, 1990 may not be repatriated without publication of a notice in the **Federal Register**, unless the newly found fragments do not result in a change in the number or cultural affiliation of the cultural items listed in the previous notice.

Comment 8: One commenter recommended that the regulation clarify that there is no obligation to revisit collections that had been previously repatriated in good faith.

Our Response: The only obligation to revisit previously repatriated holdings or collections would be to determine if the newly found fragments will result in a change in the number or cultural affiliation of the cultural items listed in a previously published notice. While such a review may reveal discrepancies in the original summary or inventory, Section 7 (f) of the Act states that any museum that repatriates cultural items in good faith is not liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with provisions of the Act.

Subsection 10.13(c)

This subsection establishes deadlines for completing summaries and inventories when a previously non-Federally recognized Indian group is acknowledged as an Indian tribe by the Secretary.

Comment 9: One commenter recommended that museums and Federal agencies should be required to provide summaries and inventories to newly recognized Indian tribes ''as soon as practicable.''

Our Response: Specific deadlines are necessary to ensure that summaries and inventories are completed expeditiously. The recommended change has not been made.

Comment 10: Seven commenters recommended that the National Park Service ensure that information regarding the acknowledgment of new Indian tribes is made available to museums and Federal agencies.

Our Response: The Secretary is required to publish a list of Indian Entities Recognized and Eligible to Receive Services from the United States in the **Federal Register** on or before January 30 of each year [Pub. L. 103–454, 108 Stat. 4791]. The purpose of the list is to assist various departments and agencies of the United States in determining the eligibility of certain groups to receive Federal services. Since 1990, six tribal entities have been newly acknowledged as eligible for funding and services by virtue of their status as Indian tribes. These are the Jena Band of Choctaws, Huron Potawatomi Inc., and Samish Indian Tribe (listed on November 13, 1996); Snoqualmie Indian

Tribe and Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (listed on March 13, 2000); and Cowlitz Tribe of Indians (listed on July 12, 2002). In order to facilitate consultation with newly acknowledged Indian tribes, the National Park Service will identify newly acknowledged Indian tribes on the National NAGPRA Program Web site—*http://www.cr.nps.gov/nagpra/*—and will include contact and other relevant information as it comes available for each Indian tribe on the National Consultation Database.

Comment 11: One commenter recommended that the Department of the Interior provide specific notice that a new Indian tribe has been acknowledged to each museum and Federal agency and have the deadlines run from that notification.

Our Response: The summary and inventory provisions of the Act apply to Federal agencies and institutions that receive Federal funds that have possession or control of Native American cultural items. There is no centralized information source to identify all institutions that receive Federal funds nor of all institutions that have possession or control of Native American cultural items. Providing specific notification that a new Indian tribe has been acknowledges is thus impractical. The National Park Service will ensure that information regarding new Indian tribes is readily available through the National NAGPRA Program Web site.

Comment 12: One commenter recommended that the rule require museums and Federal agencies to provide summaries and inventories to all non-Federally recognized Indian groups currently involved in the Federal acknowledgement process.

Our Response: Nothing in the Act or regulations precludes museums and Federal agencies from consulting with or providing information to non-Federally recognized Indian groups. Disposition of human remains and associated funerary objects to non-Federally recognized Indian groups is currently facilitated by the Native American Graves Protection and Repatriation Review Committee and a recommendation from the Secretary. Requiring the disposition of cultural items to a non-Federally recognized Indian group would appear to be beyond the Secretary's authority under the Act.

Subsection 10.13(d)

This subsection establishes deadlines for completing summaries and inventories by any institution that receives Federal funds for the first time.

Comment 13: One commenter recommended that the National Park Service provide notification of the summary and inventory requirements to all institutions that receive Federal funds for the first time.

Our Response: There is no centralized information source to identify all institutions that receive Federal funds.

Subsection 10.13(e)

This subsection establishes requirements for amending previously published **Federal Register** notices when a museum or Federal agency revises its identification of cultural items or determination of cultural affiliation.

Comments 14: One commenter identified the requirements as reasonable, but questioned that perhaps such requirements are already covered by existing regulations.

Our Response: As currently written, § 10.8 does not establish a deadline for a museum or Federal agency to complete a summary if it acquires new holdings or collections, or a new Indian tribe is recognized, or it receives Federal funds for the first time. Similarly, § 10.9 does not establish a deadline for a museum or Federal agency to complete an inventory if it acquires new holdings or collections, or a new Indian tribe is recognized, or it receives Federal funds for the first time. Without the information provided in summaries and inventories, an Indian tribe and Native Hawaiian organization has no way to have its right to repatriate under Section 7 of the Act. While many museums and Federal agencies have continued to update their summaries and inventories to accommodate new collections and newly recognized Indian tribes, the absence of regulations leaves them without clear guidance on how and when to provide summaries and inventories to possible claimants. The absence of regulations is likely to result in museums and Federal agencies accumulating a growing number of culture items that could otherwise rightfully be repatriated by lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations.

Other Issues

Comment 15: One commenter recommended revising references in other sections of the rule to the Departmental Consulting Archeologist, to whom the Secretary had previously delegated some responsibilities under the Act, to the Manager, National NAGPRA Program.

Our Response: These duties were reassigned to the Manager, National NAGPRA Program by means of a technical amendment. September 30, 2005, (70 FR 57177).

Comment 16: One commenter questioned the legal citation for the right of possession as used in the discussion of Executive Order 12630 in the preamble.

Our Response: The commenter accurately points out that 25 U.S.C. 3005 (c) specifically addresses the standard of repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony. Reference to that section has been removed from the preamble to the rule. However, nothing in the Act requires museums to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they can prove right of possession

Comment 17: One commenter questioned the public reporting burden estimated in the preamble.

Our Response: The commenter failed to provide evidence showing that the estimated public reporting burden of an average of 20 hours for the exchange of summary/inventory information between a museum and an Indian tribe and six hours per response for the notification to the Secretary of the Interior, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed and completing and reviewing the collected information is not reasonable.

Comment 18: One commenter questioned whether time limits should be set for repatriation.

Our Response: This issue will be considered in a future rulemaking for the currently reserved section at 10.15 (b) regarding failure to claim where no repatriation or disposition has occurred.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

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

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

agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

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

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

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required, since the rule does not compel the repatriation of Native American cultural items, nor does it affect any item not already subject to repatriation under NAGPRA. Further, museums are only required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they cannot prove right of possession [25 U.S.C. 3001(13) and 3005(c)].

Federalism (Executive Order 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b) of the order.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. Public reporting burden for this collection of information is expected to average 20 hours for the exchange of summary/inventory information between a museum and an Indian tribe and six hours per response for the notification to the Secretary of the Interior, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Attn: Docket No. 1024–AC84, National Park Service, Department of Interior Building, 1849 C Street, NW., Room 3317, Washington, DC 20240, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Washington, DC 20503.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment and can be Categorically Excluded under NPS exclusion 3.4A(8) ''Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or cause physical damage to it.

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it.

(c) Conflict with adjacent ownerships or land uses.

(d) Cause a nuisance to adjacent owners or occupants.''

Government-to-Government Relationship With Tribes

The rule clarifies the circumstances in which museums and Federal agencies are required to provide summaries and inventories thereby increasing notice and opportunity for Indian tribes to repatriate cultural items. As required by Executive Order 13175, the drafters consulted with representatives of Indian tribal governments prior to and during the development of the proposed rule as part of multiple, duly-noticed public meetings held by the Native American Graves Protection and Repatriation Review Committee. No Indian tribes raised concerns regarding the proposed rule during the comment period.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 10.13 Future Applicability.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to: *exsec@os.doi.gov.*

Drafting Information

This final rule was prepared by Dr. C. Timothy McKeown in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by Section 8(c)(7) of the Act.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Graves, Hawaiian Natives, Historic preservation, Indians—claims, Museums, Reporting and recordkeeping requirements, Repatriation.

■ In consideration of the foregoing, 43 CFR Subtitle A is amended as follows.

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority for part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

■ 2. Add § 10.13 to read as follows:

§ 10.13 Future applicability.

(a) General. This section sets forth the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.

(b) New holdings or collections.

(1) Any museum or Federal agency that, after completion of the summaries and inventories as required by §§ 10.8 and 10.9, receives a new holding or collection or locates a previously unreported current holding or collection that may include human remains, funerary objects, sacred objects or objects of cultural patrimony, must:

(i) Within 6 months of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the holding or collection as required by § 10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, affiliated with the collection; and

(ii) Within 2 years of receiving a new holding or collection or locating a previously unreported current holding or collection, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by § 10.9 of these regulations. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under § 10.9(f).

(2) Additional pieces or fragments of previously repatriated human remains, funerary objects, sacred objects and objects of cultural patrimony may be returned to the appropriate Indian tribe or Native Hawaiian organization without publication of a notice in the **Federal Register**, as otherwise required under §§ 10.8(f) and 10.9(e), if they do not change the number or cultural affiliation of the cultural items listed in the previous notice.

(3) A museum or Federal agency that receives a new holding or collection for which a summary or inventory was previously prepared, as required by §§ 10.8 or 10.9, may rely upon the previously prepared documents. The receiving museum or Federal agency must provide a copy of the previously prepared summary or inventory to all affiliated Indian tribes or Native Hawaiian organizations, along with notification that the receiving museum or Federal agency has assumed possession and control of the holding or collection.

(c) New Indian tribes.

(1) Any museum or Federal agency that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with a newly Federally recognized Native American tribe, must:

(i) Within 6 months of the publication in the **Federal Register** of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, or within 6 months of the effective date of this rule, whichever is later, provide a summary of the collection as required by § 10.8 to that Indian tribe; and

(ii) Within 2 years of the publication in the **Federal Register** of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, or within 2 years of the effective date of this rule, whichever is later, prepare, in consultation with the newly recognized culturally affiliated Indian tribe an inventory as required by § 10.9. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements under § 10.9(f).

(2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs is published in the **Federal Register** as required by provisions of the Federally Recognized Indian Tribe List Act of 1994 [Pub. L. 103–454, 108 Stat. 4791].

(d) New Federal funds. Any museum that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds for the first time after expiration of the statutory deadlines for completion of summaries and inventories must:

(1) Within 3 years of the date of receipt of Federal funds, or within 3 years of the effective date of this rule, whichever is later, provide a summary of the collection as required by § 10.8 to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collections; and

(2) Within 5 years of the date of receipt of Federal funds, or within 5 years of the effective date of this rule, whichever is later, prepare, in consultation with any affiliated Indian tribe or Native Hawaiian organization, an inventory as required by § 10.9.

(e) Amendment of previous decision.

(1) Any museum or Federal agency that has previously published a notice in the **Federal Register** regarding the intent to repatriate unassociated funerary objects, sacred objects, and objects of cultural patrimony under § 10.8(f), or the completion of an inventory of Native American human remains and associated funerary objects as required by § 10.9(e), must publish an amendment to that notice if, based on subsequent information, the museum or Federal agency revises its decision in a way that changes the number or cultural affiliation of the cultural items listed.

(2) Repatriation may not occur until at least 30 days after publication of the amended notice in the **Federal Register**.

(f) All actions taken as required by this section must also comply with all other relevant sections of 43 CFR 10.

Dated: March 6, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–5113 Filed 3–20–07; 8:45 am]

BILLING CODE 4312–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–311; FCC 06–180]

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules and provides guidance to implement section 621(a)(1) of the Communications Act. The Commission solicited and reviewed comments on this section and found

that the current operation of the local franchising process in many jurisdictions constitutes an unreasonable barrier to entry that impedes the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment. The Commission adopts measures to address a variety of means by which local franchising authorities are unreasonably refusing to award competitive franchises. The rules and guidance will facilitate and expedite entry of new cable competitors into the market for the delivery of video programming, and accelerate broadband deployment.

DATES: The rules in § 76.41 contains information collection requirements that have not been approved by OMB, subject to the Paperwork Reduction Act. The Federal Communications Commission will publish a document announcing the effective date upon OMB approval.

ADDRESSES: You may submit comments, identified by MB Docket No. 05–311, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Holly Saurer, *Holly.Saurer@fcc.gov* or Brendan Murray, *Brendan.Murray@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (Order),* FCC 06–180, adopted on December 20, 2006, and released on March 5, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the Report and Order

I. Introduction

1. In this Report and Order (*''Order''*), we adopt rules and provide guidance to implement Section 621(a)(1) of the Communications Act of 1934, as amended (the ''Communications Act''), 47 U.S.C. 541(a)(1), which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. We find that the current operation of the local franchising process in many jurisdictions constitutes an unreasonable barrier to entry that impedes the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment. While there is a sufficient record before us to generally determine what constitutes an ''unreasonable refusal to award an additional competitive franchise'' at the local level under Section 621(a)(1), we do not have sufficient information to make such determinations with respect to franchising decisions where a State is involved, either by issuing franchises at the State level or enacting laws governing specific aspects of the franchising process. We therefore expressly limit our findings and regulations in this *Order* to actions or inactions at the local level where a State has not specifically circumscribed the LFA's authority. In light of the differences between the scope of franchises issued at the State level and those issued at the local level, we do not address the reasonableness of demands made by State level franchising authorities, such as Hawaii, which may need to be evaluated by different criteria than those applied to the demands of local franchising authorities.

Additionally, what constitutes an unreasonable period of time for a State level franchising authority to take to review an application may differ from what constitutes an unreasonable period of time at the local level. Moreover, many States have enacted comprehensive franchise reform laws designed to facilitate competitive entry. Some of these laws allow competitive entrants to obtain statewide franchises while others establish a comprehensive set of statewide parameters that cabin the discretion of LFAs. In light of the fact that many of these laws have only been in effect for a short period of time, and we do not have an adequate record from those relatively few States that have had statewide franchising for a longer period of time to draw general conclusions with respect to the operation of the franchising process where there is State involvement, we lack a sufficient record to evaluate whether and how such State laws may lead to unreasonable refusals to award additional competitive franchises. As a result, our *Order* today only addresses decisions made by county- or municipal-level franchising authorities. Moreover, it does not address any aspect of an LFA's decision-making to the extent that such aspect is specifically addressed by State law. For example, the State of Massachusetts provides LFAs with 12 months from the date of their decision to begin the licensing process to approve or deny a franchise application. These laws are not addressed by this decision. Consequently, unless otherwise stated, references herein to ''the franchising process'' or ''franchising'' refer solely to processes controlled by county- or municipal-level franchising authorities, including but not limited to the ultimate decision to award a franchise. We further find that Commission action to address this problem is both authorized and necessary. Accordingly, we adopt

measures to address a variety of means by which local franchising authorities, *i.e.*, county- or municipal-level franchising authorities (''LFAs''), are unreasonably refusing to award competitive franchises. We anticipate that the rules and guidance we adopt today will facilitate and expedite entry of new cable competitors into the market for the delivery of video programming, and accelerate broadband deployment consistent with our statutory responsibilities. References throughout this *Order* to ''video programming'' or ''video services'' are intended to mean cable services.

2. New competitors are entering markets for the delivery of services historically offered by monopolists: Traditional phone companies are primed to enter the cable market, while traditional cable companies are competing in the telephony market. Ultimately, both types of companies are projected to offer customers a ''triple play'' of voice, high-speed Internet access, and video services over their respective networks. We believe this competition for delivery of bundled services will benefit consumers by driving down prices and improving the quality of service offerings. We are concerned, however, that traditional phone companies seeking to enter the video market face unreasonable regulatory obstacles, to the detriment of competition generally and cable subscribers in particular.

3. The Communications Act sets forth the basic rules concerning what franchising authorities may and may not do in evaluating applications for competitive franchises. Despite the parameters established by the Communications Act, however, operation of the franchising process has proven far more complex and time consuming than it should be, particularly with respect to facilities-based telecommunications and broadband providers that already have access to rights-of-way. New entrants have demonstrated that they are willing and able to upgrade their networks to provide video services, but the current operation of the franchising process at the local level unreasonably delays and, in some cases, derails these efforts due to LFAs' unreasonable demands on competitive applicants. These delays discourage investment in the fiber-based infrastructure necessary for the provision of advanced broadband services, because franchise applicants do not have the promise of revenues from video services to offset the costs of such deployment. Thus, the current operation of the franchising process often not only contravenes the statutory imperative to foster competition in the multichannel video programming distribution (''MVPD'') market, but also defeats the congressional goal of encouraging broadband deployment.

4. In light of the problems with the current operation of the franchising process, we believe that it is now appropriate for the Commission to exercise its authority and take steps to prevent LFAs from unreasonably refusing to award competitive franchises. We have broad rulemaking authority to implement the provisions of the Communications Act, including Title VI generally and Section 621(a)(1) in particular. In addition, Section 706 of the Telecommunications Act of 1996 directs the Commission to encourage broadband deployment by removing barriers to infrastructure investment, and the U.S. Court of Appeals for the District of Columbia Circuit has held that the Commission may fashion its rules to fulfill the goals of Section 706.

5. To eliminate the unreasonable barriers to entry into the cable market, and to encourage investment in broadband facilities, we: (1) Find that an LFA's failure to issue a decision on a competitive application within the time frames specified herein constitutes an unreasonable refusal to award a competitive franchise within the meaning of Section 621(a)(1) of the Communications Act; (2) find that an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to unreasonable build-out mandates constitutes an unreasonable refusal to award a competitive franchise within the meaning of Section 621(a)(1); (3) find that unless certain specified costs, fees, and other compensation required by LFAs are counted toward the statutory 5 percent cap on franchise fees, demanding them could result in an unreasonable refusal to award a competitive franchise; (4) find that it would be an unreasonable refusal to award a competitive franchise if the LFA denied an application based upon a new entrant's refusal to undertake certain obligations relating to public, educational, and government (''PEG'') and institutional networks (''I–Nets'') and (5) find that it is unreasonable under Section 621(a)(1) for an LFA to refuse to grant a franchise based on issues related to non-cable services or facilities. Furthermore, we preempt local laws, regulations, and requirements, including level-playing-field provisions, to the extent they permit LFAs to impose greater restrictions on market entry than the rules adopted herein. We also adopt a Further Notice of Proposed Rulemaking (''FNPRM'') seeking comment on how our findings in this *Order* should affect existing franchisees. In addition, the FNPRM asks for comment on local consumer protection and customer service standards as applied to new entrants.

II. Background

6. *Section 621.* Any new entrant seeking to offer ''cable service'' as a ''cable operator'' becomes subject to the requirements of Title VI. Section 621 of Title VI sets forth general cable franchise requirements. Subsection (b)(1) of Section 621 prohibits a cable operator from providing cable service in a particular area without first obtaining a cable franchise, and subsection (a)(1) grants to franchising authorities the power to award such franchises.

7. The initial purpose of Section 621(a)(1), which was added to the Communications Act by the Cable Communications Policy Act of 1984 (the ''1984 Cable Act''), was to delineate the role of LFAs in the franchising process. As originally enacted, Section 621(a)(1) simply stated that ''[a] franchising authority may award, in accordance with the provisions of this title, 1 or more franchises within its jurisdiction.'' A few years later, however, the Commission prepared a report to Congress on the cable industry pursuant to the requirements of the 1984 Cable Act. In that Report, the Commission concluded that in order ''[t]o encourage more robust competition in the local video marketplace, the Congress should * * * forbid local franchising authorities from unreasonably denying a franchise to potential competitors who are ready and able to provide service.''

8. In response, Congress revised Section 621(a)(1) through the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act'') to read as follows: ''A franchising authority may award, in accordance with the provisions of this title, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and *may not unreasonably refuse to award an additional competitive franchise.*'' In the Conference Report on the legislation, Congress found that competition in the cable industry was sorely lacking:

> For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor,

a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

To address this problem, Congress abridged local government authority over the franchising process to promote greater cable competition:

> Based on the evidence in the record taken as a whole, it is clear that there are benefits from competition between two cable systems. Thus, the Committee believes that local franchising authorities should be encouraged to award second franchises. Accordingly, [the 1992 Cable Act] as reported, prohibits local franchising authorities from unreasonably refusing to grant second franchises.

As revised, Section 621(a)(1) establishes a clear, Federal-level limitation on the authority of LFAs in the franchising process in order to ''promote the availability to the public of a diversity of views and information through cable television and other video distribution media,'' and to ''rely on the marketplace, to the maximum extent feasible, to achieve that availability.'' Congress further recognized that increased competition in the video programming industry would curb excessive rate increases and enhance customer service, two areas in particular which Congress found had deteriorated because of the monopoly power of cable operators brought about, at least in part, by the local franchising process.

9. In 1992, Congress also revised Section 621(a)(1) to provide that ''[a]ny applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635.'' Section 635, in turn, states that ''[a]ny cable operator adversely affected by any final determination made by a franchising authority under section 621(a)(1) * * * may commence an action within 120 days after receiving notice of such determination'' in Federal court or a State court of general jurisdiction. Congress did not, however, provide an explicit judicial remedy for other forms of unreasonable refusals to award competitive franchises, such as an LFA's refusal to act on a pending franchise application within a reasonable time period.

10. *The Local Franchising NPRM.* Notwithstanding the limitation imposed on LFAs by Section 621(a)(1), prior to commencement of this proceeding, the Commission had seen indications that the current operation of the franchising process still serves as an unreasonable barrier to entry for potential new cable entrants into the MVPD market. We refer herein to ''new entrants,'' ''new cable entrants,'' and ''new cable competitors'' interchangeably. Specifically, we intend these terms to describe entities that opt to offer ''cable service'' over a ''cable system'' utilizing public rights-of-way, and thus are defined under the Communications Act as ''cable operator[s]'' that must obtain a franchise. Although we recognize that there are numerous other ways to enter the MVPD market (*e.g.*, direct broadcast satellite (''DBS''), wireless cable, private cable), our actions in this proceeding relate to our authority under Section 621(a)(1) of the Communications Act, and thus are limited to competitive entrants seeking to obtain cable franchises. In November 2005, the Commission issued a Notice of Proposed Rulemaking (''*Local Franchising NPRM*'') to determine whether LFAs are unreasonably refusing to award competitive franchises and thereby impeding achievement of the statute's goals of increasing competition in the delivery of video programming and accelerating broadband deployment.

11. The Commission sought comment on the current environment in which new cable entrants attempt to obtain competitive cable franchises. For example, the Commission requested input on the number of: (a) LFAs in the United States; (b) competitive franchise applications filed to date; and (c) ongoing franchise negotiations. To determine whether the current operation of the franchising process discourages competition and broadband deployment, the Commission also sought information regarding, among other things:

- How much time, on average, elapses between the date a franchise application is filed and the date an LFA acts on the application, and during that period, how much time is spent in active negotiations;
- Whether to establish a maximum time frame for an LFA to act on an application for a competitive franchise;
- Whether ''level-playing-field'' mandates, which impose on new entrants terms and conditions identical to those in the incumbent cable operator's franchise, constitute unreasonable barriers to entry;
- Whether build-out requirements (*i.e.*, requirements that a franchisee deploy cable service to parts or all of the franchise area within a specified period of time) are creating unreasonable barriers to competitive entry;
- Specific examples of any monetary or in-kind LFA demands unrelated to cable services that could be adversely affecting new entrants' ability to obtain franchises; and
- Whether current procedures or requirements are appropriate for any cable operator, including incumbent cable operators.

12. In the *Local Franchising NPRM*, we tentatively concluded that Section 621(a)(1) empowers the Commission to adopt rules to ensure that the franchising process does not unduly interfere with the ability of potential competitors to provide video programming to consumers. Accordingly, the Commission sought comment on how it could best remedy any problems with the current franchising process.

13. The Commission also asked whether Section 706 provides a basis for the Commission to address barriers faced by would-be entrants to the video market. Section 706 directs the Commission to encourage broadband deployment by utilizing ''measures that promote competition * * * or other regulating methods that remove barriers to infrastructure investment.'' Competitive entrants in the video market are, in large part, deploying new fiber-based facilities that allow companies to offer the ''triple play'' of voice, data, and video services. New entrants' video offerings thus directly affect their roll-out of new broadband services. Revenues from cable services are, in fact, a driver for broadband deployment. In light of that relationship, the Commission sought comment on whether it could take remedial action pursuant to Section 706.

14. *The Franchising Process.* The record in this proceeding demonstrates that the franchising process differs significantly from locality to locality. In most States, franchising is conducted at the local level, affording counties and municipalities broad discretion in deciding whether to grant a franchise. Some counties and municipalities have cable ordinances that govern the structure of negotiations, while others may proceed on an applicant-by-applicant basis. Where franchising negotiations are focused at the local level, some LFAs create formal or informal consortia to pool their resources and expedite competitive entry.

15. To provide video services over a geographic area that encompasses more than one LFA, a prospective entrant must become familiar with all applicable regulations. This is a time-consuming and expensive process that has a chilling effect on competitors. Verizon estimates, for example, that it will need 2,500–3,000 franchises in order to provide video services throughout its service area. AT&T states that its Project Lightspeed deployment

is projected to cover a geographic area that would encompass as many as 2,000 local franchise areas. BellSouth estimates that there are approximately 1,500 LFAs within its service area. Qwest's in-region territory covers a potential 5,389 LFAs. While other companies are also considering competitive entry, these estimates amply demonstrate the regulatory burden faced by competitors that seek to enter the market on a wide scale, a burden that is amplified when individual LFAs unreasonably refuse to grant competitive franchises.

16. A few States and municipalities recently have recognized the need for reform and have established expedited franchising processes for new entrants. Although these processes also vary greatly and thus are of limited help to new cable providers seeking to quickly enter the marketplace on a regional basis, they do provide more uniformity in the franchising process on an intrastate basis. These State level reforms appear to offer promise in assisting new entrants to more quickly begin offering consumers a competitive choice among cable providers. In 2005, the Texas legislature designated the Texas Public Utility Commission (''PUC'') as the franchising authority for State-issued franchises, and required the PUC to issue a franchise within 17 business days after receipt of a completed application from an eligible applicant. In 2006, Indiana, Kansas, South Carolina, New Jersey, North Carolina, and California also passed legislation to streamline the franchising process by providing for expedited, State level grants of franchises. Virginia, by contrast, did not establish statewide franchises but mandated uniform time frames for negotiations, public hearings, and ultimate franchise approval at the local level. In particular, a ''certificated provider of telecommunications service'' with existing authority to use public rights-of-way is authorized to provide video service within 75 days of filing a request to negotiate with each individual LFA. Similarly, Michigan recently enacted legislation that streamlines the franchise application process, establishes a 30-day timeframe within which an LFA must make a decision, and eliminates build-out requirements.

17. In some States, however, franchise reform efforts launched in recent months have failed. For example, in Florida, bills that would have allowed competitive providers to enter the market with a permit from the Office of the Secretary of State, and contained no build-out or service delivery schedules, died in committee. In Louisiana, the Governor vetoed a bill that would have created a State franchise structure, provided for automatic grant of an application 45 days after filing, and contained no build-out requirements. In Maine, a bill that would have replaced municipal franchises with State franchises was withdrawn. Finally, a Missouri bill that would have given the Public Service Commission the authority to grant franchises and would have prohibited local franchising died in committee.

III. Discussion

18. Based on the voluminous record in this proceeding, which includes comments filed by new entrants, incumbent cable operators, LFAs, consumer groups, and others, we conclude that the current operation of the franchising process can constitute an unreasonable barrier to entry for potential cable competitors, and thus justifies Commission action. We find that we have authority under Section 621(a)(1) to address this problem by establishing limits on LFAs' ability to delay, condition, or otherwise ''unreasonably refuse to award'' competitive franchises. We find that we also have the authority to consider the goals of Section 706 in addressing this problem under Section 621(a)(1). We believe that, absent Commission action, deployment of competitive video services by new cable entrants will continue to be unreasonably delayed or, at worst, derailed. Accordingly, we adopt incremental measures directed to LFA-controlled franchising processes, as described in detail below. We anticipate that the rules and guidance we adopt today will facilitate and expedite entry of new cable competitors into the market for the delivery of multichannel video programming and thus encourage broadband deployment.

A. The Current Operation of the Franchising Process Unreasonably Interferes With Competitive Entry

19. Most communities in the United States lack cable competition, which would reduce cable rates and increase innovation and quality of service. Although LFAs adduced evidence that they have granted some competitive franchises, and competitors acknowledge that they have obtained some franchises, the record includes only a few hundred examples of competitive franchises, many of which were obtained after months of unnecessary delay. For example, Verizon has obtained franchises covering approximately 200 franchise areas. In the vast majority of communities, cable competition simply does not exist. For example, in Michigan, a number of LFAs have granted competitive franchises to local telecommunications companies. *See* Ada Township, *et al.*, Comments at 18–26. Vermont has granted franchises to competitive operators in Burlington, Newport, Berlin, Duxbury, Stowe, and Moretown. VPSB Comments at 5. Mt. Hood Regulatory Commission (''MHRC''), a consolidated regulatory authority for six Oregon localities, has negotiated franchises with cable overbuilders, although those companies ultimately were unable to deploy service. Similarly, the City of Los Angeles has granted two competitive franchises, but each of the competitors went out of business shortly after negotiating the franchise. City of Los Miami-Dade has granted 11 franchises to six providers, and currently is considering the application of another potential entrant. New Jersey has granted five competitive franchises, but only two ultimately provided service to customers.

20. The dearth of competition is due, at least in part, to the franchising process. The record demonstrates that the current operation of the franchising process unreasonably prevents or, at a minimum, unduly delays potential cable competitors from entering the MVPD market. Numerous commenters have adduced evidence that the current operation of the franchising process constitutes an unreasonable barrier to entry. Regulatory restrictions and conditions on entry shield incumbents from competition and are associated with various economic inefficiencies, such as reduced innovation and distorted consumer choices. We recognize that some LFAs have made reasonable efforts to facilitate competitive entry into the video programming market. We also recognize that recent State level reforms have the potential to streamline the process to a noteworthy degree. We find, though, that the current operation of the local franchising process often is a roadblock to achievement of the statutory goals of enhancing cable competition and broadband deployment.

21. Commenters have identified six factors that stand in the way of competitive entry. They are: (1) Unreasonable delays by LFAs in acting on franchise applications; (2) unreasonable build-out requirements imposed by LFAs; (3) LFA demands unrelated to the franchising process; (4) confusion concerning the meaning and scope of franchise fee obligations; (5) unreasonable LFA demands for PEG channel capacity and construction of I–Nets; and (6) level-playing-field

requirements set by LFAs. We address each factor below.

22. *LFA Delays in Acting on Franchise Applications.* The record demonstrates that unreasonable delays in the franchising process have obstructed and, in some cases, completely derailed attempts to deploy competitive video services. Many new entrants have been subjected to lengthy, costly, drawn-out negotiations that, in many cases, are still ongoing. The FTTH Council cited a report by an investment firm that, on average, the franchising process, as it currently operates, delays entry by 8–18 months. The record generally supports that estimate. For example, Verizon had 113 franchise negotiations underway as of the end of March 2005. By the end of March 2006, LFAs had granted only 10 of those franchises. In other words, more than 90% of the negotiations were not completed within one year. Verizon noted that delays are often caused by mandatory waiting periods. BellSouth explained that negotiations took an average of 10 months for each of its 20 cable franchise agreements, and that in one case, the negotiations took nearly three years. AT&T claims that anti-competitive conditions, such as level-playing-field constraints and LFA demands regarding build-out, not only delay entry but can prevent it altogether. BellSouth notes that absent such demands (in Georgia, for example), the company's applications were granted quickly. Most of Ameritech's franchise negotiations likewise took a number of years. New entrants other than the large incumbent local exchange carriers (''LECs'') also have experienced delays in the franchising process. NTCA provided an example of a small, competitive IPTV provider that is in ongoing negotiations that began more than one year ago. The term ''local exchange carrier'' means any person that is engaged in the provision of telephone exchange service or exchange access. 47 U.S.C. 153(26). For the purposes of Section 251 of the Communications Act, ''the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that (A) On the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) On such date of enactment, was deemed to be a member of the exchange carrier association * * *; or (B)(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member [of the exchange carrier association].'' 47 U.S.C. 251(h)(1). A competitive LEC is any LEC other than an incumbent LEC. A LEC will be treated as an ILEC if ''(A) Such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph [251(h)](1); (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph [251(h)](1); and (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.'' 47 U.S.C. 251(h)(2).

23. These delays are particularly unreasonable when, as is often the case, the applicant already has access to rights-of-way. One of the primary justifications for cable franchising is the LFA's need to regulate and receive compensation for the use of public rights-of-way. We note that certain franchising authorities may have existing authority to regulate LECs through State and local rights-of-way statutes and ordinances. However, when considering a franchise application from an entity that already has rights-of-way access, such as an incumbent LEC, an LFA need not and should not devote substantial attention to issues of rights-of-way management. Recognizing this distinction, some States have enacted or proposed streamlined franchising procedures specifically tailored to entities with existing access to public rights-of-way. Moreover, in obtaining a certificate for public convenience and necessity from a State, a facilities-based provider generally has demonstrated its legal, technical, and financial fitness to be a provider of telecommunications services. Thus, an LFA need not spend a significant amount of time considering the fitness of such applicants to access public rights-of-way.

24. Delays in acting on franchise applications are especially onerous because franchise applications are rarely denied outright, which would enable applicants to seek judicial review under Section 635. Rather, negotiations are often drawn out over an extended period of time. As a result, the record shows that numerous new entrants have accepted franchise terms they considered unreasonable in order to avoid further delay. Others have filed lawsuits seeking a court order compelling the LFA to act, which entails additional delay, legal uncertainty, and great expense. For example, in Maryland, Verizon filed suit against Montgomery County, seeking to invalidate some of the County's franchise rules, and requesting that the County be required to negotiate a franchise agreement, after the parties unsuccessfully attempted to negotiate a franchise beginning in May 2005. Alternatively, some prospective entrants have walked away from unduly prolonged negotiations. Moreover, delays provide the incumbent cable operator the opportunity to launch targeted marketing campaigns before the competitor's rollout, thus undermining a competitor's prospects for success.

25. Despite this evidence, incumbent cable operators and LFAs nevertheless assert that new entrants can obtain and are obtaining franchises in a timely fashion, and that delays are largely due to unreasonable behavior on the part of franchise applicants, not LFAs. The incumbent cable operators accuse Verizon of making unreasonable demands through its model franchise. Verizon asserts that it submits a model franchise to begin negotiations because uniformity is necessary for its nationwide service deployment. Verizon states that it is willing to negotiate and tailor the model franchise to each locality's needs. For example, Minnesota LFAs claim that they can grant a franchise in as little as eight weeks. The record, however, shows that expeditious grants of competitive franchises are atypical. Most LFAs lack any temporal limits for consideration of franchise applications, and of those that have such limits, many set forth lengthy time frames. In localities without a time limit or with an unreasonable time limit, the delays caused by the current operation of the franchising process present a significant barrier to entry. We recognize that some franchising authorities move quickly, as a matter of law or policy. The record indicates that some LFAs have stated that they welcome competition to the incumbent cable operator, and actively facilitate such competition. For example, a consolidated franchising authority in Oregon negotiated and approved competitive franchises within 90 days. An advisory committee in Minnesota granted two competitive franchises in six months, after a statutorily imposed eight-week notice and hearing period. While we laud the prompt disposition of franchise applications in these particular areas, the record shows that these examples are atypical. For example, the cities of Chicago and Indianapolis acknowledged that, as currently operated, their franchising processes take one to three years, respectively. Miami-Dade's cable ordinance permits the county to make a final decision on a cable franchise up to eight months after receiving a completed application, and the process may take longer if an applicant submits an incomplete application or amends its application.

26. Incumbent cable operators and LFAs state that new entrants could gain rapid entry if the new entrants simply agreed to the same terms applied to incumbent cable franchisees. However, this is not a reasonable expectation generally, given that the circumstances surrounding competitive entry are considerably different than those in existence at the time incumbent cable operators obtained their franchises. Incumbent cable operators originally negotiated franchise agreements as a means of acquiring or maintaining a monopoly position. In most instances, imposing the incumbent cable operator's terms and conditions on a new entrant would make entry prohibitively costly because the entrant cannot assume that it will quickly—or ever—amass the same number or percentage of subscribers that the incumbent cable operator captured. The record demonstrates that requiring entry on the same terms as incumbent cable operators may thwart entry entirely or may threaten new entrants' chances of success once in the market.

27. Incumbent cable operators also suggest that delay is attributable to competitors that are not really serious about entering the market, as demonstrated by their failure to file the thousands of franchise applications required for broad competitive entry. We reject this explanation as inconsistent with both the record as well as common sense. Given the complexity and time-consuming nature of the current franchising process, it is patently unreasonable to expect any competitive entrant to file several thousand applications and negotiate several thousand franchising processes at once. Moreover, the incumbent LECs have made their plans to enter the video services market abundantly clear, and the evidence in the record demonstrates their seriousness about doing so. For instance, they are investing billions of dollars to upgrade their networks to enable the provision of video services, expenditures that would make little sense if they were not planning to enter the video market. Finally, the record also demonstrates that the obstacles posed by the current operation of the franchising process are so great that some prospective entrants have shied away from the franchise process altogether.

28. We also reject the argument by incumbent cable operators that delays in the franchising process are immaterial because competitive applicants are not ready to enter the market and frequently delay initiating service once they secure a franchise. We find that lack of competition in the video market is not attributable to inertia on the part of competitors. Given the financial risk, uncertainty, and delay new entrants face when they apply for a competitive franchise, it is not surprising that they wait until they get franchise approval before taking all steps necessary to provide service. The sooner a franchise is granted, the sooner an applicant can begin completing those steps. Consequently, shortening the franchising process will accelerate market entry. Moreover, the record shows that streamlining the franchising process can expedite market entry. For example, less than 30 days after Texas authorized statewide franchises, Verizon filed an application for a franchise with respect to 21 Texas communities and was able to launch services in most of those communities within 45 days.

29. Incumbent cable operators offer evidence from their experience in the renewal and transfer processes as support for their contention that the vast majority of LFAs operate in a reasonable and timely manner. We find that incumbent cable operators' purported success in the franchising process is not a useful comparison in this case. Today's large MSOs obtained their current franchises by either renewing their preexisting agreements or by merging with and purchasing other incumbent cable franchisees with preexisting agreements. For two key reasons, their experiences in franchise transfers and renewals are not equivalent to those of new entrants seeking to obtain new franchises. First, in the transfer or renewal context, delays in LFA consideration do not result in a bar to market entry. Second, in the transfer or renewal context, the LFA has a vested interest in preserving continuity of service for subscribers, and will act accordingly.

30. We also reject the claims by incumbent cable operators that the experiences of Ameritech, RCN, and other overbuilders demonstrate that new entrants can and do obtain competitive franchises in a timely manner. The term ''overbuild'' describes the situation in which a second cable operator enters a local market in direct competition with an incumbent cable operator. In these markets, the second operator, or ''overbuilder,'' lays wires in the same area as the incumbent, ''overbuilding'' the incumbent's plant, thereby giving consumers a choice between cable service providers. Charter claims that it secured franchises and upgraded its systems in a highly competitive market and that the incumbent LECs possess sufficient resources to do the same. BellSouth notes, however, that Charter does not indicate a single instance in which it obtained a franchise through an initial negotiation, rather than a transfer. Comcast argues that it faces competition from cable overbuilders in several markets. The record is scant and inconsistent, however, with respect to overbuilder experiences in obtaining franchises, and thus does not provide reliable evidence. BellSouth also claims that, despite RCN's claims that the franchising process has worked in other proceedings, RCN previously has painted a less positive picture of the process and has called it a high barrier to entry. Given these facts, we do not believe that the experiences cited by incumbent cable operators shed any significant light on the current operation of the franchising process with respect to competitive entrants.

31. *Impact of Build-Out Requirements.* The record shows that build-out issues are one of the most contentious between LFAs and prospective new entrants, and that build-out requirements can greatly hinder the deployment of new video and broadband services. New and potential entrants commented extensively on the adverse impact of build-out requirements on their deployment plans. Large incumbent LECs, small and mid-sized incumbent LECs, competitive LECs and others view build-out requirements as the most significant obstacle to their plans to deploy competitive video and broadband services. Similarly, consumer groups and the U.S. Department of Justice, Antitrust Division, urge the Commission to address this aspect of the current franchising process in order to speed competitive entry.

32. The record demonstrates that build-out requirements can substantially reduce competitive entry. Numerous commenters urge the Commission to prohibit LFAs from imposing any build-out requirements, and particularly universal build-out requirements. They argue that imposition of such mandates, rather than resulting in the increased service throughout the franchise area that LFAs desire, will cause potential new entrants to simply refrain from entering the market at all. They argue that even build-out provisions that do not require deployment throughout an entire franchise area may prevent a prospective new entrant from offering service.

33. The record contains numerous examples of build-out requirements at the local level that resulted in delayed entry, no entry, or failed entry. A consortium of California communities demanded that Verizon build out to

every household in each community before Verizon would be allowed to offer service to any community, even though large parts of the communities fell outside of Verizon's telephone service area. Furthermore, Qwest has withdrawn franchise applications in eight communities due to build-out requirements. In each case, Qwest determined that entering into a franchise agreement that mandates universal build-out would not be economically feasible.

34. In many instances, level-playing-field provisions in local laws or franchise agreements compel LFAs to impose on competitors the same build-out requirements that apply to the incumbent cable operator. Cable operators use threatened or actual litigation against LFAs to enforce level-playing-field requirements and have successfully delayed entry or driven would-be competitors out of town. Even in the absence of level-playing-field requirements, incumbent cable operators demand that LFAs impose comparable build-out requirements on competitors to increase the financial burden and risk for the new entrant.

35. Build-out requirements can deter market entry because a new entrant generally must take customers from the incumbent cable operator, and thus must focus its efforts in areas where the take-rate will be sufficiently high to make economic sense. Because the second provider realistically cannot count on acquiring a share of the market similar to the incumbent's share, the second entrant cannot justify a large initial deployment. Rather, a new entrant must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding. For example, Verizon has expressed significant concerns about deploying service in areas heavily populated with MDUs already under exclusive contract with another MVPD. Due to the risk associated with entering the video market, forcing new entrants to agree up front to build out an entire franchise area too quickly may be tantamount to forcing them out of—or precluding their entry into—the business.

36. In many cases, build-out requirements also adversely affect consumer welfare. DOJ noted that imposing uneconomical build-out requirements results in less efficient competition and the potential for higher prices. Non-profit research organizations the Mercatus Center and the Phoenix Center argue that build-out requirements reduce consumer welfare. Each conclude that build-out requirements imposed on competitive cable entrants only benefit an incumbent cable operator. The Mercatus Center, citing data from the FCC and GAO indicating that customers with a choice of cable providers enjoy lower rates, argues that, to the extent that build-out requirements deter entry, they result in fewer customers having a choice of providers and a resulting reduction in rates. The Phoenix Center study contends that build-out requirements deter entry and conflict with Federal, State, and local government goals of rapid broadband deployment. Another research organization, the American Consumer Institute (ACI), concluded that build-out requirements are inefficient: if a cable competitor initially serves only one neighborhood in a community, and a few consumers in this neighborhood benefit from the competition, total welfare in the community improves because no consumer was made worse and some consumers (those who can subscribe to the competitive service) were made better. In comparison, requirements that deter competitive entry may make some consumers (those who would have been able to subscribe to the competitive service) worse off. In many instances, placing build-out conditions on competitive entrants harms consumers and competition because it increases the cost of cable service. Qwest commented that, in those communities it has not entered due to build-out requirements, consumers have been deprived of the likely benefit of lower prices as the result of competition from a second cable provider. This claim is supported by the Commission's 2005 annual cable price survey, in which the Commission observed that average monthly cable rates varied markedly depending on the presence—and type—of MVPD competition in the local market. The greatest difference occurred where there was wireline overbuild competition, where average monthly cable rates were 20.6 percent lower than the average for markets deemed noncompetitive. For these reasons, we disagree with LFAs and incumbent cable operators who argue that unlimited local flexibility to impose build-out requirements, including universal build-out of a franchise area, is essential to promote competition in the delivery of video programming and ensure a choice in providers for every household. In many cases, build-out requirements may have precisely the opposite effects—they deter competition and deny consumers a choice.

37. Although incumbent LECs already have telecommunications facilities deployed over large areas, build-out requirements may nonetheless be a formidable barrier to entry for them for two reasons. First, incumbent LECs must upgrade their existing plant to enable the provision of video service, which often costs billions of dollars. Second, as the Commission stated in the *Local Franchising NPRM*, the boundaries of the areas served by facilities-based providers of telephone and/or broadband services frequently do not coincide with the boundaries of the areas under the jurisdiction of the relevant LFAs. In some cases, a potential new entrant's service area comprises only a portion of the area under the LFA's jurisdiction. When LECs are required to build out where they have no existing plant, the business case for market entry is significantly weakened because their deployment costs are substantially increased. In other cases, a potential new entrant's facilities may already cover most or all of the franchise area, but certain economic realities prevent or deter the provider from upgrading certain ''wire center service areas'' within its overall service area. For example, some wire center service areas may encompass a disproportionate level of business locations or multi-dwelling units (''MDUs'') with MVPD exclusive contracts. New entrants also point out that some wire center service areas are low in population density (measured by homes per cable plant mile). The record suggests, however, that LFAs generally have not required franchisees to provide service in low-density areas. New entrants argue that the imposition of build-out requirements in either circumstance creates a disincentive for them to enter the marketplace.

38. Incumbent cable operators assert that new entrants' claims are exaggerated, and that, in most cases, LEC facilities are coterminous with municipal boundaries. The evidence submitted by new entrants, however, convincingly shows that inconsistencies between the geographic boundaries of municipalities and the network footprints of telephone companies are commonplace. The cable industry has adduced no contrary evidence. The fact that few LFAs argued that non-coterminous boundaries are a problem is not sufficient to contradict the incumbent LECs' evidence.

39. Based on the record as a whole, we find that build-out requirements imposed by LFAs can constitute unreasonable barriers to entry for competitive applicants. Indeed, the record indicates that because potential competitive entrants to the cable market may not be able to economically justify

build-out of an entire local franchising area immediately, these requirements can have the effect of granting *de facto* exclusive franchises, in direct contravention of Section 621(a)(1)'s prohibition of exclusive cable franchises.

40. Besides thwarting potential new entrants' deployment of video services and depriving consumers of reduced prices and increased choice, build-out mandates imposed by LFAs also may directly contravene the goals of Section 706 of the Telecommunications Act of 1996, which requires the Commission to ''remov[e] barriers to infrastructure investment'' to encourage the deployment of broadband services ''on a reasonable and timely basis.'' We agree with AT&T that Section 706, in conjunction with Section 621(a)(1), requires us to prevent LFAs from adversely affecting the deployment of broadband services through cable regulation.

41. We do not find persuasive incumbent cable operators' claims that build-out should necessarily be required for new entrants into the video market because of certain obligations faced by cable operators in their deployment of voice services. To the extent cable operators believe they face undue regulatory obstacles to providing voice services, they should make that point in other proceedings, not here. In any event, commenters generally agree that the record indicates that the investment that a competitive cable provider must make to deploy video in a particular geographic area far outweighs the cost of the additional facilities that a cable operator must install to deploy voice service.

42. *LFA Demands Unrelated to the Provision of Video Services.* Many commenters recounted franchise negotiation experiences in which LFAs made unreasonable demands unrelated to the provision of video services. Verizon, for example, described several communities that made unreasonable requests, such as the purchase of street lights, wiring for all houses of worship, the installation of cell phone towers, cell phone subsidies for town employees, library parking at Verizon's facilities, connection of 220 traffic signals with fiber optics, and provision of free wireless broadband service in an area in which Verizon's subsidiary does not offer such service; the *Wall Street Journal* reported that Verizon also faced a request for a video hookup for Christmas celebrations and video cameras to record a math-tutoring program. In Maryland, some localities conditioned a franchise upon Verizon's agreement to make its data services subject to local customer service regulation. AT&T provided examples of impediments that Ameritech New Media faced when it entered the market, including a request for a new recreation center and pool. FTTH Council highlighted Grande Communications' experience in San Antonio, which required that Grande Communications make an up-front, $1 million franchise fee payment and fund a $50,000 scholarship with additional annual contributions of $7,200. The record demonstrates that LFA demands unrelated to cable service typically are not counted toward the statutory 5 percent cap on franchise fees, but rather imposed on franchisees in addition to assessed franchise fees. Based on this record evidence, we are convinced that LFA requests for unreasonable concessions are not isolated, and that these requests impose undue burdens upon potential cable providers.

43. *Assessment of Franchise Fees.* The record establishes that unreasonable demands over franchise fee issues also contribute to delay in franchise negotiations at the local level and hinder competitive entry. Fee issues include not only which franchise-related costs imposed on providers should be included within the 5 percent statutory franchise fee cap established in Section 622(b), but also the proper calculation of franchise fees (*i.e.*, the revenue base from which the 5 percent is calculated). In Virginia, municipalities have requested large ''acceptance fees'' upon grant of a franchise, in addition to franchise fees. Other LFAs have requested consultant and attorneys' fees. Several Pennsylvania localities have requested franchise fees based on cable and non-cable revenues. Some commenters assert that an obligation to provide anything of value, including PEG costs, should apply toward the franchise fee obligation.

44. The parties indicate that the lack of clarity with respect to assessment of franchise fees impedes deployment of new video programming facilities and services for three reasons. First, some LFAs make unreasonable demands regarding franchise fees as a condition of awarding a competitive franchise. Second, new entrants cannot reasonably determine the costs of entry in any particular community. Accordingly, they may delay or refrain from entering a market because the cost of entry is unclear and market viability cannot be projected. Third, a new entrant must negotiate these terms prior to obtaining a franchise, which can take a considerable amount of time. Thus, unreasonable demands by some LFAs effectively creates an unreasonable barrier to entry.

45. *PEG and I–Net Requirements.* Negotiations over PEG and I–Nets also contribute to delays in the franchising process. In response to the *Local Franchising NPRM*, we received numerous comments asking for clarification of what requirements LFAs reasonably may impose on franchisees to support PEG and I–Nets. We also received comments suggesting that some LFAs are making unreasonable demands regarding PEG and I–Net support as a condition of awarding competitive franchises. LFAs have demanded funding for PEG programming and facilities that exceeds their needs, and will not provide an accounting of where the money goes. For example, one municipality in Florida requested $6 million for PEG facilities, and a Massachusetts community requested 10 PEG channels, when the incumbent cable operator only provides two. Several commenters argued that it is unreasonable for an LFA to request a number of PEG channels from a new entrant that is greater than the number of channels that the community is using at the time the new entrant submits its franchise application. The record indicates that LFAs also have made what commenters view as unreasonable institutional network requests, such as free cell phones for employees, fiber optic service for traffic signals, and redundant fiber networks for public buildings.

46. *Level-Playing-Field Provisions.* The record demonstrates that, in considering franchise applications, some LFAs are constrained by so-called ''level-playing-field'' provisions in local laws or incumbent cable operator franchise agreements. Such provisions typically impose upon new entrants terms and conditions that are neither ''more favorable'' nor ''less burdensome'' than those to which existing franchisees are subject. Some LFAs impose level-playing-field requirements on new entrants even without a statutory, regulatory, or contractual obligation to do so. Minnesota's process allows incumbent cable operators to be active in a competitor's negotiation, and incumbent cable operators have challenged franchise grants when those incumbent cable operators believed that the LFA did not follow correct procedure. According to BellSouth, the length of time for approval of its franchises was tied directly to level-playing-field constraints; absent such demands (in Georgia, for example), the company's applications were granted quickly. NATOA contends, however, that

although level-playing-field provisions sometimes can complicate the franchising process, they do not present unreasonable barriers to entry. NATOA and LFAs argue that level-playing-field provisions serve important policy goals, such as ensuring a competitive environment and providing for an equitable distribution of services and obligations among all operators.

47. The record demonstrates that local level-playing-field mandates can impose unreasonable and unnecessary requirements on competitive applicants. As noted above, level-playing-field provisions enable incumbent cable operators to delay or prevent new entry by threatening to challenge any franchise that an LFA grants. Comcast asserts that MSOs have not threatened litigation to delay franchise approvals, but to insist that their legal and contractual rights are honored in the grant of a subsequent franchise. The record demonstrates, however, that local level-playing-field requirements may require LFAs to impose obligations on new entrants that directly contravene Section 621(a)(1)'s prohibition on unreasonable refusals to award a competitive franchise. In most cases, incumbent cable operators entered into their franchise agreements in exchange for a monopoly over the provision of cable service. Build-out requirements and other terms and conditions that may have been sensible under those circumstances can be unreasonable when applied to competitive entrants. NATOA's argument that level-playing-field requirements always serve to ensure a competitive environment and provide for an equitable distribution of services and obligations ignores that incumbent and competitive operators are not on the same footing. LFAs do not afford competitive providers the monopoly power and privileges that incumbents received when they agreed to their franchises, something that investors recognize.

48. Moreover, competitive operators should not bear the consequences of an incumbent cable operator's choice to agree to any unreasonable franchise terms that an LFA may demand. And while the record is mixed as to whether level-playing-field mandates ''assure that cable systems are responsive to the needs and interests of the local community,'' the more compelling evidence indicates that they do not because they prevent competition. Local level-playing-field provisions impose costs and risks sufficient to undermine the business plan for profitable entry in a given community, thereby undercutting the possibility of competition.

49. *Benefits of Cable Competition.* We further agree with new entrants that reform of the operation of the franchise process is necessary and appropriate to achieve increased video competition and broadband deployment. The record demonstrates that new cable competition reduces rates far more than competition from DBS. Specifically, the presence of a second cable operator in a market results in rates approximately 15 percent lower than in areas without competition—about $5 per month. The magnitude of the rate decreases caused by wireline cable competition is corroborated by the rates charged in Keller, Texas, where the price for Verizon's ''Everything'' package is 13 percent below that of the incumbent cable operator, and in Pinellas County, Florida, where Knology is the overbuilder and the incumbent cable operator's rates are $10–15 lower than in neighboring areas where it faces no competition.

50. We also conclude that broadband deployment and video entry are ''inextricably linked'' and that, because the current operation of the franchising process often presents an unreasonable barrier to entry for the provision of video services, it necessarily hampers deployment of broadband services. The record demonstrates that broadband deployment is not profitable without the ability to compete with the bundled services that cable companies provide. As the Phoenix Center explains, ''the more potential revenues that the network can generate in a household, the more likely it is the network will be built to that household.'' DOJ's comments underscore that additional video competition will likely speed deployment of advanced broadband services to consumers. Thus, although LFAs only oversee the provision of wireline-based video services, their regulatory actions can directly affect the provision of voice and data services, not just cable. We find reasonable AT&T's assertion that carriers will not invest billions of dollars in network upgrades unless they are confident that LFAs will grant permission to offer video services quickly and without unreasonable difficulty.

51. In sum, the current operation of the franchising process deters entry and thereby denies consumers choices. Delays in the franchising process also hamper accelerated broadband deployment and investment in broadband facilities in direct contravention of the goals of Section 706, the President's competitive broadband objectives, and our established broadband goals. In addition, the economic effects of franchising delays can trickle down to manufacturing companies, which in some cases have lost business because potential new entrants would not purchase equipment without certainties that they could deploy their services. We discuss below our authority to address these problems.

B. The Commission Has Authority to Adopt Rules to Implement Section 621(a)(1)

52. In the *Local Franchising NPRM*, the Commission tentatively concluded that it has the authority to adopt rules implementing Title VI of the Act, including Section 621(a)(1). The Commission sought comment on whether it has the authority to adopt rules or whether it is limited to providing guidance. Based on the record and governing legal principles, we affirm this tentative conclusion and find that the Commission has the authority to adopt rules to implement Title VI and, more specifically, Section 621(a)(1).

53. Congress delegated to the Commission the task of administering the Communications Act. As the Supreme Court has explained, the Commission serves ''as the 'single Government agency' with 'unified jurisdiction' and 'regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio.' '' To that end, ''[t]he Act grants the Commission broad responsibility to forge a rapid and efficient communications system, and broad authority to implement that responsibility.'' Section 201(b) authorizes the Commission to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'' ''[T]he grant in section 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act.' '' This grant of authority therefore necessarily includes Title VI of the Communications Act in general, and Section 621(a)(1) in particular. Other provisions in the Act reinforce the Commission's general rulemaking authority. Section 303(r), for example, states that ''the Commission from time to time, as public convenience, interest, or necessity requires shall * * * make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. * * *'' Section 4(i) states that the Commission ''may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be

necessary in the execution of its functions.''

54. Section 2 of the Communications Act grants the Commission explicit jurisdiction over ''cable services.'' Moreover, as we explained in the *Local Franchising NPRM,* Congress specifically charged the Commission with the administration of the Cable Act, including Section 621. In addition, Federal courts have consistently upheld the Commission's authority in this area.

55. Although several commenters disagreed with our tentative conclusion, none has persuaded us that the Commission lacks the authority to adopt rules to implement Section 621(a)(1). Incumbent cable operators and franchise authorities argue that the judicial review provisions in Sections 621(a)(1) and 635 indicate that Congress gave the courts exclusive jurisdiction to interpret and enforce Section 621(a)(1), including authority to decide what constitutes an unreasonable refusal to award a competitive cable franchise. We find, however, that this argument reads far too much into the judicial review provisions. The mere existence of a judicial review provision in the Communications Act does not, by itself, strip the Commission of its otherwise undeniable rulemaking authority. As a general matter, the fact that Congress provides a mechanism for judicial review to remedy a violation of a statutory provision does not deprive an agency of the authority to issue rules interpreting that statutory provision. Here, nothing in the statutory language or the legislative history suggests that by providing a judicial remedy, Congress intended to divest the Commission of the authority to adopt and enforce rules implementing Section 621. In light of the Commission's broad rulemaking authority under Section 201 and other provisions in the Act, the absence of a specific grant of rulemaking authority in Section 621 is ''not peculiar.'' Other provisions in the Act demonstrate that when Congress intended to grant exclusive jurisdiction, it said so in the legislation. Here, however, neither Section 621(a)(1) nor Section 635 includes an exclusivity provision, and we decline to read one into either provision.

56. In addition, we note that the judicial review provisions at issue here on their face apply only to a final decision by the franchising authority. They do not provide for review of unreasonable refusals to award an additional franchise by withholding a final decision or insisting on unreasonable terms that an applicant properly refuses to accept. Nor do the judicial review provisions say anything about the broader range of practices governed by Section 621.

57. We also reject the argument by some incumbent cable operators and franchise authorities that Section 621(a)(1) is unambiguous and contains no gaps in the statutory language that would give the Commission authority to regulate the franchising process. We strongly disagree. Congress did not define the term ''unreasonably refuse,'' and it is far from self-explanatory. The United States Court of Appeals for the District of Columbia Circuit has held that the term ''unreasonable'' is among the ''ambiguous statutory terms'' in the Communications Act, and that the ''court owes substantial deference to the interpretation the Commission accords them.'' We therefore find that Section 621(a)(1)'s requirement that an LFA ''may not unreasonably refuse to award an additional competitive franchise'' creates ambiguity that the Commission has the authority to resolve. The possibility that a court, in reviewing a particular matter, may determine whether an LFA ''unreasonably'' denied a second franchise does not displace the Commission's authority to adopt rules generally interpreting what constitutes an ''unreasonable refusal'' under Section 621(a)(1).

58. Some incumbent cable operators and franchise authorities argue that Section 621(a)(1) imposes no general duty of reasonableness on the LFA in connection with procedures for awarding a competitive franchise. According to these commenters, the ''unreasonably refuse to award'' language in the first sentence in Section 621(a)(1) must be read in conjunction with the second sentence, which relates to the *denial* of a competitive franchise application. Based on this, commenters claim that ''unreasonably refuse to award'' means ''unreasonably *deny*'' and, thus, Section 621(a)(1) is not applicable before a final decision is rendered. We disagree. By concluding that the language ''unreasonably refuse to award'' means the same thing as ''unreasonably deny,'' commenters violate the long-settled principle of statutory construction that each word in a statutory scheme must be given meaning. We find that the better reading of the phrase ''unreasonably refuse to award'' is that Congress intended to cover LFA conduct beyond ultimate denials by final decision, such as situations where an LFA has unreasonably refused to award an additional franchise by withholding a final decision or by insisting on unreasonable terms that an applicant refuses to accept. While the judicial review provisions in Sections 621(a)(1) and 635 refer to a ''final decision'' or ''final determination,'' the Commission's rulemaking authority under Section 621 is not constrained in the same manner. Instead, the Commission has the authority to address what constitutes an unreasonable refusal to award a franchise, and as stated above, a local franchising authority may unreasonably refuse to award a franchise through other routes than issuing a final decision or determination denying a franchise application. For all of these reasons, we conclude that the Commission may exercise its statutory authority to establish Federal standards identifying those LFA-imposed terms and conditions that would violate Section 621(a)(1) of the Communications Act.

59. Incumbent cable operators and local franchise authorities also maintain that the legislative history of Section 621(a)(1) demonstrates that Congress reserved to LFAs the authority to determine what constitutes ''reasonable'' grounds for franchise denials, with oversight by the courts, and left no authority under Section 621(a)(1) for the Commission to issue rules or guidelines governing the franchise approval process. Commenters point to the Conference Committee Report on the 1992 Amendments, which adopted the Senate version of Section 621, rather than the House version, which ''contained five examples of circumstances under which it is reasonable for a franchising authority to deny a franchise.'' We find commenters' reliance on the legislative history to be misplaced. While the House may have initially considered adopting a categorical approach for determining what would constitute a ''reasonable *denial*,'' Congress ultimately decided to forgo that approach and prohibit franchising authorities from unreasonably refusing to *award* an additional competitive franchise. To be sure, commenters are correct to point out that Congress chose not to define in the Act the meaning of the phrase ''unreasonably refuse to award.'' However, commenters'' assertion that Congress therefore intended for this gap in the statute to be filled in by only LFAs and courts lacks any basis in law or logic. Rather, we believe that it is far more reasonable to assume, consistent with settled principles of administrative law, that Congress intended that the Commission, which is charged by Congress with the administration of Title VI, to have the authority to do so. There is nothing in the statute or the legislative history to suggest that

Congress intended to displace the Commission's explicit authority to interpret and enforce provisions in Title VI, including Section 621(a)(1).

60. The pro-competitive rules and guidance we adopt in this *Order* are consistent with Congressional intent. Section 601 states that Title VI is designed to ''promote competition in cable communications.'' In a report to Congress prepared pursuant to the 1984 Cable Act, the Commission concluded that in order ''[t]o encourage more robust competition in the local video marketplace, the Congress should * * * forbid local franchising authorities from unreasonably denying a franchise to potential competitors who are ready and able to provide service.'' In response, Congress revised Section 621(a)(1) to prohibit a franchising authority from unreasonably refusing to award an additional competitive franchise. The regulations set forth herein give force to that restriction and vindicate the national policy goal of promoting competition in the video marketplace.

61. Our authority to adopt rules implementing Section 621(a)(1) is further supported by Section 706 of the Telecommunications Act of 1996, which directs the Commission to encourage broadband deployment by utilizing ''measures that promote competition * * * or other regulating methods that remove barriers to infrastructure investment.'' The D.C. Circuit has found that the Commission has the authority to consider the goals of Section 706 when formulating regulations under the Act. The record here indicates that a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the Federal goals of enhanced cable competition and rapid broadband deployment are interrelated. Thus, if the franchising process were allowed to slow competition in the video service market, that would decrease broadband infrastructure investment, which would not only affect video but other broadband services as well. As the DOJ points out, potential gains from competition, such as expedited broadband deployment, are more likely to be realized without imposed restrictions or conditions on entry in the franchising process.

62. We reject the argument by incumbent cable operators and LFAs that any rules adopted under Section 621(a)(1) could adversely affect the franchising process. In particular, LFAs contend that cable service requirements must vary from jurisdiction to jurisdiction because cable franchises need to be ''tailored to the needs and interests of the local community.'' The Communications Act preserves a role for local jurisdictions in the franchise process. We do not believe that the rules we adopt today will hamper the franchising process. While local franchising authorities and potential new entrants have opposing viewpoints about the reasonableness of certain terms, we received comments from both groups that agree that Commission guidance concerning factors that are ''reasonable'' will help to expedite the franchising process. Therefore, we anticipate that our implementation of Section 621(a)(1) will aid new entrants, incumbent cable operators, and LFAs in understanding the bounds of local authority in considering competitive franchise applications.

63. In sum, we conclude that we have clear authority to interpret and implement the Cable Act, including the ambiguous phrase ''unreasonably refuse to award'' in Section 621(a)(1), to further the congressional imperatives to promote competition and broadband deployment. As discussed above, this authority is reinforced by Section 4(i) of the Communications Act, which gives us broad power to perform acts necessary to execute our functions, and the mandate in Section 706 of the Telecommunications Act of 1996 that we encourage broadband deployment through measures that promote competition. We adopt the rules and regulations in this *Order* pursuant to that authority. We find that Section 621(a)(1) prohibits not only an LFA's ultimate unreasonable denial of a competitive franchise application, but also LFA procedures and conduct that have the effect of unreasonably interfering with the ability of a would-be competitor to obtain a competitive franchise, whether by (1) Creating unreasonable delays in the process, or (2) imposing unreasonable regulatory roadblocks, such that they effectively constitute an ''unreasonable refusal to award an additional competitive franchise'' within the meaning of Section 621(a)(1).

C. Steps To Ensure That the Local Franchising Process Does Not Unreasonably Interfere With Competitive Cable Entry and Rapid Broadband Deployment

64. Commenters in this proceeding identified several specific issues regarding problems with the current operation of the franchising process. These include: (1) Failure by LFAs to grant or deny franchises within reasonable time frames; (2) LFA requirements that a facilities-based new entrant build out its cable facilities beyond a reasonable service area; (3) certain LFA-mandated costs, fees, and other compensation and whether they must be counted toward the statutory 5 percent cap on franchise fees; (4) new entrants' obligations to provide support mandated by LFAs for PEG and I–Nets; and (5) facilities-based new entrants' obligations to comply with local consumer protection and customer service standards when the same facilities are used to provide other regulated services, such as telephony. We discuss each measure below.

1. Maximum Time Frame for Franchise Negotiations

65. As explained above, the record demonstrates that, although the average time that elapses between application and grant of a franchise varies from locality to locality, unreasonable delays in the franchising process are commonplace and have hindered, and in some cases thwarted entirely, attempts to deploy competitive video services. The record is replete with examples of unreasonable delays in the franchising process, which can indefinitely delay competitive entry and leave an applicant without recourse in violation of Section 621(a)(1)'s prohibition on unreasonable refusals to award a competitive franchise.

66. We find that unreasonable delays in the franchising process deprive consumers of competitive video services, hamper accelerated broadband deployment, and can result in unreasonable refusals to award competitive franchises. Thus, it is necessary to establish reasonable time limits for LFAs to render a decision on a competitive applicant's franchise application. We define below the boundaries of a reasonable time period in which an LFA must render a decision, and we establish a remedy for applicants that do not receive a decision within the applicable time frame. We establish a maximum time frame of 90 days for entities with existing authority to access public rights-of-way, and six months for entities that do not have authority to access public rights-of-way. The deadline will be calculated from the date that the applicant files an application or other writing that includes the information described below. Failure of an LFA to act within the allotted time constitutes an unreasonable refusal to award the franchise under Section 621(a)(1), and the LFA at that time is deemed to have granted the entity's application on an interim basis, pursuant to which the applicant may begin providing service. Thereafter, the LFA and applicant may continue to negotiate the terms of the

franchise, consistent with the guidance and rulings in this *Order.*

a. Time Limit

67. The record shows that the franchising process in some localities can drag on for years. We are concerned that without a defined time limit, the extended delays will continue, depriving consumers of cable competition and applicants of franchises. We thus consider the appropriate length of time that should be afforded LFAs in reaching a final decision on a competitive franchise application. Commenters suggest a wide range of time frames that may be reasonable for an LFA's consideration of a competitive franchise application. TIA proposes that we adopt the time limit used in the Texas franchising legislation, which would allow a new entrant to obtain a franchise within 17 days of submitting an application. Other commenters propose time limits ranging from 30 days to six months. While NATOA in its comments opposes any time limit, in February 2006 a NATOA representative told the Commission that the six-month time limit that California law imposes is reasonable. Some commenters have suggested that a franchise applicant that holds an existing authorization to access rights-of-way (*e.g.*, a LEC) should be subject to a shorter time frame than other applicants. These commenters reason that deployment of video services requires an upgrade to existing facilities in the rights-of-way rather than construction of new facilities, and such applicants generally have demonstrated their fitness as a provider of communications services.

68. In certain States, an SFA is responsible for all franchising decisions (*e.g.*, Hawaii, Connecticut, Vermont, Texas, Indiana, Kansas, South Carolina, and beginning January 1, 2007, California and North Carolina), and the majority of these States have established time frames within which those SFAs must make franchising decisions. We are mindful, however, that States in which an LFA is the franchising authority, the LFA may be a small municipal entity with extremely limited resources. We note that a number of other States in addition to Texas have adopted or are considering statewide franchising in order to speed competitive entry. Nothing in our discussion here is intended to preempt the actions of any States. The time limit we adopt herein is a ceiling beyond which LFA delay in processing a franchise application becomes unreasonable. To the extent that States and/or municipalities wish to adopt shorter time limits, they remain free to do so. Thus, it may not always be feasible for an LFA to carry out legitimate local policy objectives permitted by the Act and appropriate State or local law within an extremely short time frame. We therefore seek to establish a time limit that balances the reasonable needs of the LFA with the needs of the public for greater video service competition and broadband deployment. As set out in detail below, we believe that it is appropriate to provide rules to guide LFAs that retain ultimate decision-making power over franchise decisions.

69. As a preliminary matter, we find that a franchise applicant that holds an existing authorization to access rights-of-way should be subject to a shorter time frame for review than other applicants. First, one of the primary justifications for cable franchising is the locality's need to regulate and receive compensation for the use of public rights-of-way. In considering an application for a cable franchise by an entity that already has rights-of-way access, however, an LFA need not devote substantial attention to issues of rights-of-way management. Recognizing this distinction, some States have created streamlined franchising procedures specifically tailored to entities with existing access to public rights-of-way. Second, in obtaining a certificate for public convenience and necessity from a State, a facilities-based provider generally has demonstrated its legal, technical, and financial fitness to be a provider of telecommunications services. Thus, an LFA need not spend a significant amount of time considering the fitness of such applicants to access public rights-of-way. NATOA and its members concede that the authority to occupy the right-of-way has an effect on the review of the financial, technical, and legal merits of the application, and eases right-of-way management burdens. We thus find that a time limit is particularly appropriate for an applicant that already possesses authority to deploy telecommunications infrastructure in the public rights-of-way. We further agree with AT&T that entities with existing authority to access rights-of-way should be entitled to an expedited process, and that lengthy consideration of franchise applications made by such entities would be unreasonable. Specifically, we find that 90 days provides LFAs ample time to review and negotiate a franchise agreement with applicants that have access to rights-of-way.

70. Based on our examination of the record, we believe that a time limit of 90 days for those applicants that have access to rights-of-way strikes the appropriate balance between the goals of facilitating competitive entry into the video marketplace and ensuring that franchising authorities have sufficient time to fulfill their responsibilities. In this vein, we note that 90 days is a considerably longer time frame than that suggested by some commenters, such as TIA. Additionally, we recognize that the Communications Act gives an LFA 120 days to make a final decision on a cable operator's request to modify a franchise. We believe that the record supports an even shorter time here because the costs associated with delay are much greater with respect to entry. When an incumbent cable franchisee requests a modification, consumers are not deprived of service while an LFA deliberates. Here, delay by an individual LFA deprives consumers of the benefits of cable competition. An LFA should be able to negotiate a franchise with a familiar applicant that is already authorized to occupy the right-of-way in less than 120 days. The list of legitimate issues to be negotiated is short, and we narrow those issues considerably in this *Order*. We therefore impose a deadline of 90 days for an LFA to reach a final decision on a competitive franchise application submitted by those applicants authorized to occupy rights-of-way within the franchise area.

71. For other applicants, we believe that six months affords a reasonable amount of time to negotiate with an entity that is not already authorized to occupy the right-of-way, as an LFA will need to evaluate the entity's legal, financial, and technical capabilities in addition to generally considering the applicant's fitness to be a communications provider over the rights-of-way. Commenters have presented substantial evidence that six months provides LFAs sufficient time to review an applicant's proposal, negotiate acceptable terms, and award or deny a competitive franchise. We are persuaded by the record that a six-month period will allow sufficient time for review. Given that LFAs must act on modification applications within the 120-day limit set by the Communications Act, we believe affording an additional two months—*i.e.*, a six-month review period—will provide LFAs ample time to conduct negotiations with an entity new to the franchise area.

72. Failure of an LFA to act within these time frames is unreasonable and constitutes a refusal to award a competitive franchise. Consistent with other time limits that the Communications Act and our rules impose, a franchising authority and a

competitive applicant may extend these limits if both parties agree to an extension of time. We further note that an LFA may engage in franchise review activities that are not prohibited by the Communications Act or our rules, such as multiple levels of review or holding a public hearing, provided that a final decision is made within the time period established under this *Order.*

b. Commencement of the Time Period for Negotiations

73. The record demonstrates that there is no universally accepted event that ''starts the clock'' for purposes of calculating the length of franchise negotiations between LFAs and new entrants. Accordingly, we find it necessary to delineate the point at which such calculation should begin. Few commenters offer specific suggestions on what event should open the time period for franchise negotiations. Qwest contends that the period for negotiations should commence once an applicant files an application or a proposed agreement. On the other hand, Verizon argues that the clock must start before an applicant files a formal application because significant negotiations often take place before a formal filing. Specifically, the company advocates starting the clock when the applicant initiates negotiations with the LFA, which could be documented informally between the applicant and the LFA or with a formal Commission filing for evidentiary purposes.

74. We will calculate the deadline from the date that the applicant first files certain requisite information in writing with the LFA. This filing must meet any applicable State or local requirements, including any State or local laws that specify the contents of a franchise application and payment of a reasonable application fee in jurisdictions where such fee is required. This application, whether formal or informal, must at a minimum contain: (1) The applicant's name; (2) the names of the applicant's officers and directors; (3) the applicant's business address; (4) the name and contact information of the applicant's contact; (5) a description of the geographic area that the applicant proposes to serve; (6) the applicant's proposed PEG channel capacity and capital support; (7) the requested term of the agreement; (8) whether the applicant holds an existing authorization to access the community's public rights-of-way; and (9) the amount of the franchise fee the applicant agrees to pay (consistent with the Communications Act and the standards set forth herein). Any requirement the LFA imposes on the applicant to negotiate or engage in any regulatory or administrative processes before the applicant files the requisite information is *per se* unreasonable and preempted by this *Order.* Such a requirement would delay competitive entry by undermining the efficacy of the time limits adopted in this *Order* and would not serve any legitimate purpose. At their discretion, applicants may choose to engage in informal negotiations before filing an application. These informal negotiations do not apply to the deadline, however; we will calculate the deadline from the date that the applicant first files its application with an LFA. For purposes of any disputes that may arise, the applicant will have the burden of proving that it filed the requisite information or, where required, the application with the LFA, by producing either a receipt-stamped copy of the filing or a certified mail return receipt indicating receipt of the required documentation. We believe that adoption of a time limit with a specific starting point will ensure that the franchising process will not be unduly delayed by pre-filing requirements, will increase applicants' incentive to begin negotiating in earnest at an earlier stage of the process, and will encourage both LFAs and applicants to reach agreement within the specified time frame. We note that an LFA may toll the running of the 90-day or six-month time period if it has requested information from the franchise applicant and is waiting for such information. Once the information is received by the LFA, the time period would automatically begin to run again.

c. Remedy for Failure To Negotiate a Franchise Within the Time Limit

75. Finally, we consider what remedy or remedies may be appropriate in the event that an LFA and franchise applicant are unable to reach agreement within the 90-day or six-month time frame. Section 635 of the Communications Act provides a specific remedy for an applicant who believes that an LFA unreasonably denied its application containing the requisite information within the applicable time frame. Here, we establish a remedy in the event an LFA does not grant or deny a franchise application by the deadline. In selecting this remedy, we seek to provide a meaningful incentive for local franchising authorities to abide by the deadlines contained in this *Order* while at the same time maintaining LFAs' authority to manage rights-of-way, collect franchise fees, and address other legitimate franchise concerns.

76. In the event that an LFA fails to grant or deny an application by the deadline set by the Commission, Verizon urges the Commission to temporarily authorize the applicant to provide video service. In general, we agree with this proposed remedy. In order to encourage franchising authorities to reach a final decision on a competitive application within the applicable time frame set forth in this *Order,* a failure to abide by the Commission's deadline must bring with it meaningful consequences. Additionally, we do not believe that a sufficient remedy for an LFA's inaction on an application is the creation of a remedial process, such as arbitration, that will result in even further delay. We also decline to agree to NATOA's suggestion that an applicant should be awarded a franchise identical to that held by the incumbent cable operator. This suggestion is impractical for the same reasons that we find local level-playing-field requirements are preempted. Therefore, if an LFA has not made a final decision within the time limits we adopt in this *Order,* the LFA will be deemed to have granted the applicant an interim franchise based on the terms proposed in the application. This interim franchise will remain in effect only until the LFA takes final action on the application. We believe this approach is preferable to having the Commission itself provide interim franchises to applicants because a ''deemed grant'' will begin the process of developing a working relationship between the competitive applicant and the franchising authority, which will be helpful in the event that a negotiated franchise is ultimately approved.

77. The Commission has authority to deem a franchise application ''granted'' on an interim basis. As noted above, the Commission has broad authority to adopt rules to implement Title VI and, specifically, Section 621(a)(1) of the Communications Act. As the Supreme Court has explained, the Commission serves ''as the 'single Government agency' with 'unified jurisdiction' and 'regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio.' '' Section 201(b) authorizes the Commission to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'' ''[T]he grant in section 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act.' '' Section 2 of the Communications Act grants the Commission explicit jurisdiction over ''cable services.'' Moreover, Congress

specifically charged the Commission with the administration of the Cable Act, including Section 621, and Federal courts have consistently upheld the Commission's authority in this area.

78. The Commission has previously granted franchise applicants temporary authority to operate in local areas. In the early 1970s, the Commission required every cable operator to obtain a Federal certificate of compliance from the Commission before it could ''commence operations.'' In effect, the Commission acted as a co-franchising authority—requiring both an FCC certificate and a local franchise (granted pursuant to detailed Commission guidance and oversight) prior to the provision of services. As the Commission noted, ''[a]lthough we have determined that local authorities ought to have the widest scope in franchising cable operators, *the final responsibility is ours.*'' And the Commission granted interim franchises for cable services in areas where there was no other franchising authority.

79. We note that the deemed grant approach is consistent with other Federal regulations designed to address inaction on the part of a State decision maker. In addition, this approach does not raise any special legal concerns about impinging on State or local authority. The Act plainly gives Federal courts authority to review decisions made pursuant to Section 621(a)(1). As the Supreme Court observed in *Iowa Utilities Board*, ''This is, at bottom, a debate not about whether the States will be allowed to do their own thing, but about whether it will be the FCC or the Federal courts that draw the lines to which they must hew. To be sure, the FCC's lines can be even more restrictive than those drawn by the courts—but it is hard to spark a passionate 'States' rights' debate over that detail.''

80. We anticipate that a deemed grant will be the exception rather than the rule because LFAs will generally comply with the Commission's rules and either accept or reject applications within the applicable time frame. However, in the rare instance that a local franchising authority unreasonably delays acting on an application and a deemed grant therefore occurs, we encourage the parties to continue to negotiate and attempt to reach a franchise agreement following expiration of the formal time limit. Each party will have a strong incentive to negotiate sincerely: LFAs will want to ensure that their constituents continue to receive the benefits of competition and cable providers will want to protect the investments they have made in deploying their systems. If the LFA ultimately acts to deny the franchise after the deadline, the applicant may appeal such denial pursuant to Section 635(a) of the Communications Act. If, on the other hand, the LFA ultimately grants the franchise, the applicant's operations will continue pursuant to the negotiated franchise, rather than the interim franchise.

2. Build-Out

81. As discussed above, build-out requirements in many cases may constitute unreasonable barriers to entry into the MVPD market for facilities-based competitors. Accordingly, we limit LFAs' ability to impose certain build-out requirements pursuant to Section 621(a)(1).

a. Authority

82. Proponents of build-out requirements do not offer any persuasive legal argument that the Commission lacks authority to address this significant problem and conclude that certain build-out requirements for competitive entrants are unreasonable. Nothing in the Communications Act requires competitive franchise applicants to agree to build-out their networks in any particular fashion. Nevertheless, incumbent cable operators and LFAs contend that it is both lawful and appropriate, in all circumstances, to impose the same build-out requirements on competitive applicants that apply to incumbents. We reject these arguments and find that Section 621(a)(1) prohibits LFAs from refusing to award a new franchise on the ground that the applicant will not agree to unreasonable build-out requirements.

83. The only provision in the Communications Act that even alludes to build-out is Section 621(a)(4)(A), which provides that ''a franchising authority * * * shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area.'' Far from a grant of authority, however, Section 621(a)(4)(A) is actually a limitation on LFAs' authority. In circumstances when it is reasonable for LFAs to require cable operators to build out their networks in accordance with a specific plan, LFAs must give franchisees a reasonable period of time to comply with those requirements. However, Section 621(a)(4)(A) does not address the central question here: Whether it may be unreasonable for LFAs to impose certain build-out requirements on competitive cable applicants. To answer that question, Section 621(a)(4)(A) must be read in conjunction with Section 621(a)(1)'s prohibition on unreasonable refusals to award competitive franchises, and in light of the Act's twin goals of promoting competition and broadband deployment.

84. Our interpretation of Section 621(a)(4)(A) is consistent with relevant jurisprudence and the legislative history. The DC Circuit has squarely rejected the notion that Section 621(a)(4)(A) authorizes LFAs to impose universal build-out requirements on all cable providers. The court has held that Section 621(a)(4)(A) does not require that cable operators extend service ''throughout the franchise area,'' but instead is a limit on franchising authorities that seek to impose such obligations. That decision comports with the legislative history, which indicates that Congress explicitly rejected an approach that would have imposed affirmative build-out obligations on all cable providers. The House version of the bill provided that an LFA's ''refusal to award a franchise shall not be unreasonable if, for example, such refusal is on the ground * * * of inadequate assurance that the cable operator will, within a reasonable period of time, provide universal service throughout the entire franchise area under the jurisdiction of the franchising authority.'' By declining to adopt this language, Congress made clear that it did not intend to impose uniform build-out requirements on all franchise applicants.

85. LFAs and incumbent cable operators also rely on Section 621(a)(3) to support compulsory build-out. That Section provides: ''In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.'' We therefore address below some commenters' concerns that limitations on build-out requirements will contravene or render ineffective the statutory prohibition against discrimination on the basis of income (''redlining.'') But for present purposes, it has already been established that Section 621(a)(3) does not mandate universal build-out. As the Commission previously has stated, ''the intent of [Section 621(a)(3)] was to prevent the exclusion of cable service based on income'' and ''this section does not mandate that the franchising authority require the complete wiring of the franchise area in those circumstances where such an exclusion is not based on the income status of the residents of the unwired area.'' The U.S. Court of Appeals for the District of Columbia

Circuit (the ''DC Circuit'') has upheld this interpretation in the face of an argument that universal build-out was required by Section 621(a)(3):

> The statute on its face prohibits discrimination on the basis of income; it manifestly does not require universal [build-out]. * * * [The provision requires] ''wiring of all areas of the franchise'' *to prevent redlining.* However, if no redlining is in evidence, it is likewise clear that wiring within the franchise area can be limited.

b. Discussion

86. Given the current state of the MVPD marketplace, we find that an LFA's refusal to award a competitive franchise because the applicant will not agree to specified build-out requirements can be unreasonable. Market conditions today are far different from when incumbent cable operators obtained their franchises. Incumbent cable providers were frequently awarded community-wide monopolies. In that context, a requirement that the provider build out facilities to the entire community was eminently sensible. The essential bargain was that the cable operator would provide service to an entire community in exchange for its status as the only franchisee from whom customers in the community could purchase service. Thus, a financial burden was placed upon the monopoly provider in exchange for the undeniable benefit of being able to operate without competition.

87. By contrast, new cable entrants must compete with entrenched cable operators and other video service providers. A competing cable provider that seeks to offer service in a particular community cannot reasonably expect to capture more than a fraction of the total market. Build-out requirements thus impose significant financial risks on competitive applicants, who must incur substantial construction costs to deploy facilities within the franchise area in exchange for the opportunity to capture a relatively small percentage of the market. In many instances, build-out requirements make entry so expensive that the prospective competitive provider withdraws its application and simply declines to serve any portion of the community. Given the entry-deterring effect of build-out conditions, our construction of Section 621(a)(1) best serves the Act's purposes of promoting competition and broadband deployment.

88. Accordingly, we find that it is unlawful for LFAs to refuse to grant a competitive franchise on the basis of unreasonable build-out mandates. For example, absent other factors, it would seem unreasonable to require a new competitive entrant to serve everyone in a franchise area before it has begun providing service to anyone. It also would seem unreasonable to require facilities-based entrants, such as incumbent LECs, to build out beyond the footprint of their existing facilities before they have even begun providing cable service. It also would seem unreasonable, absent other factors, to require more of a new entrant than an incumbent cable operator by, for instance, requiring the new entrant to build out its facilities in a shorter period of time than that originally afforded to the incumbent cable operator; or requiring the new entrant to build out and provide service to areas of lower density than those that the incumbent cable operator is required to build out to and serve. As we understand these franchising agreements are public documents, we find it reasonable to require the new entrant to produce the incumbent's current agreement. We note, however, it would seem reasonable for an LFA in establishing build-out requirements to consider the new entrant's market penetration. It would also seem reasonable for an LFA to consider benchmarks requiring the new entrant to increase its build-out after a reasonable period of time had passed after initiating service and taking into account its market success.

89. Some other practices that seem unreasonable include: Requiring the new entrant to build out and provide service to buildings or developments to which the new entrant cannot obtain access on reasonable terms; requiring the new entrant to build out to certain areas or customers that the entrant cannot reach using standard technical solutions; and requiring the new entrant to build out and provide service to areas where it cannot obtain reasonable access to and use of the public rights of way. Subjecting a competitive applicant to more stringent build-out requirements than the LFA placed on the incumbent cable operator is unreasonable in light of the greater economic challenges facing competitive applicants explained above. Moreover, build-out requirements may significantly deter entry and thus forestall competition by placing substantial demands on competitive entrants.

90. In sum, we find, based on the record as a whole, that build-out requirements imposed by LFAs can operate as unreasonable barriers to competitive entry. The Commission has broad authority under Section 621(a)(1) to determine whether particular LFA conditions on entry are unreasonable. Exercising that authority, we find that Section 621(a)(1) prohibits LFAs from refusing to award a competitive franchise because the applicant will not agree to unreasonable build-out requirements.

c. Redlining

91. The Communications Act forbids access to cable service from being denied to any group of potential residential cable subscribers because of neighborhood income. The statute is thus clear that no provider of cable services may deploy services with the intent to redline and ''that access to cable service [may not be] denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.'' Nothing in our action today is intended to limit LFAs' authority to appropriately enforce Section 621(a)(3) and to ensure that their constituents are protected against discrimination. This includes an LFA's authority to deny a franchise that would run afoul of Section 621(a)(3).

92. MMTC suggests that the Commission develop anti-redlining ''best practices,'' specifically defining who is responsible for overseeing redlining issues, what constitutes redlining, and developing substantial relief for those affected by redlining. MMTC suggests that an LFA could afford a new entrant means of obtaining pre-clearance of its build-out plans, establishing a rebuttable presumption that the new entrant will not redline (for example, proposing to replicate a successful anti-redlining program employed in another franchise area). Alternatively, an LFA could allow a new entrant to choose among regulatory options, any of which would be sufficient to allow for build-out to commence while the granular details of anti-redlining reporting are finalized. We note these suggestions but do not require them.

3. Franchise Fees

93. In response to questions in the *Local Franchising NPRM* concerning existing practices that may impede cable entry, various parties discussed unreasonable demands relating to franchise fees. Commenters have also indicated that unreasonable demands concerning fees or other consideration by some LFAs have created an unreasonable barrier to entry. Such matters include not only the universe of franchise-related costs imposed on providers that should or should not be included within the 5 percent statutory franchise fee cap established in Section 622(b), but also the calculation of franchise fees (*i.e.*, the revenue base from which the 5 percent is calculated).

Accordingly, we will exercise our authority under Section 621(a)(1) to address the unreasonable demands made by some LFAs. In particular, any refusal to award an additional competitive franchise because of an applicant's refusal to accede to demands that are deemed impermissible below shall be considered to be unreasonable. The Commission's jurisdiction over franchise fee policy is well established. The general law with respect to franchise fees should be relatively well known, but we believe it may be helpful to restate the basic propositions here in an effort to avoid misunderstandings that can lead to delay in the franchising process as well as unreasonable refusals to award competitive franchises. To the extent that our determinations are relevant to incumbent cable operators as well, we would expect that discrepancies would be addressed at the next franchise renewal negotiation period, as noted in the FNPRM infra, which tentatively concludes that the findings in this *Order* should apply to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs.

94. We address below four significant issues relating to franchise fee payments. First, we consider the franchise fee revenue base. Second, we examine the limitations on charges incidental to the awarding or enforcing of a franchise. Third, we discuss the proper classification of in-kind payments unrelated to the provision of cable service. Finally, we consider whether contributions in support of PEG services and equipment should be considered within the franchise fee calculation.

95. The fundamental franchise fee limitation is set forth in Section 622(b), which states that ''franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.'' Section 622(g)(1) broadly defines the term ''franchise fee'' to include ''any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.'' Section 622(g)(2)(c), however, excludes from the term ''franchise fee'' any ''capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.'' And Section 622(g)(2)(D) excludes from the term (and therefore from the 5 percent cap) ''requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages.'' It has been established that certain types of ''in-kind'' obligations, in addition to monetary payments, may be subject to the cap. The legislative history of the 1984 Cable Act, which adopted the franchise fee limit, specifically provides that ''lump sum grants not related to PEG access for municipal programs such as libraries, recreation departments, detention centers or other payments not related to PEG access would be subject to the 5 percent limitation.''

96. Definition of the 5 percent fee cap revenue base. As a preliminary matter, we address the request of several parties to clarify which revenue-generating services should be included in the gross fee figure from which the 5 percent calculation is drawn. The record indicates that in the franchise application process, disputes that arise as to the propriety of particular fees can be a significant cause of delay in the process and that some franchising authorities are making unreasonable demands in this area. This issue is of particular concern where a prospective new entrant for the provision of cable services is a facilities-based incumbent or competitive provider of telecommunications and/or broadband services. A number of controversies regarding which revenues are properly subject to application of the franchise fee were resolved before the Supreme Court's decision in *NCTA* v. *Brand X*, which settled issues concerning the proper regulatory classification of cable modem-based Internet access service. Nevertheless, in some quarters, there has been considerable uncertainty over the application of franchise fees to Internet access service revenues and other non-cable revenues. Thus, we believe it may assist the franchise process and prevent unreasonable refusals to award competitive franchises to reiterate certain conclusions that have been reached with respect to the franchise fee base.

97. We clarify that a cable operator is not required to pay franchise fees on revenues from non-cable services. Advertising revenue and home shopping commissions have been included in an operator's gross revenues for franchise fee calculation purposes. Section 622(b) provides that the ''franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.'' The term ''cable service'' is explicitly defined in Section 602(6) to mean (i) ''the one-way transmission to subscribers of video programming or other programming service,'' and (ii) ''subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.'' The Commission determined in the *Cable Modem Declaratory Ruling* that a franchise authority may not assess franchise fees on non-cable services, such as cable modem service, stating that ''revenue from cable modem service would not be included in the calculation of gross revenues from which the franchise fee ceiling is determined.'' Although this decision related specifically to Internet access service revenues, the same would be true for other ''non-cable'' service revenues. Thus, Internet access services, including broadband data services, and any other non-cable services are not subject to ''cable services'' fees.

98. Charges incidental to the awarding or enforcing of a franchise. Section 622(g)(2)(D) excludes from the term ''franchise fee'' ''requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages.'' Such ''incidental'' requirements or charges may be assessed by a franchising authority without counting toward the 5 percent cap. A number of parties assert, and seek Commission clarification, that certain types of payments being requested in the franchise process are not incidental fees under Section 622(g)(2)(D) but instead must either be prohibited or counted toward the cap. Furthermore, a number of parties report that disputes over such issues as well as unreasonable demands being made by some franchising authorities in this regard may be leading to delays in the franchising process as well as unreasonable refusals to award competitive franchises. We therefore determine that non-incidental franchise-related costs required by LFAs must count toward the 5 percent franchise fee cap and provide guidance as to what constitutes such non-incidental franchise-related costs. Under the Act, these costs combined with other franchise fees cannot exceed 5 percent of gross revenues for cable service.

99. BellSouth urges us to prohibit franchising authorities from assessing fees that the authorities claim are ''incidental'' if those fees are not specifically allowed under Section 622 of the Cable Act. BellSouth asserts that LFAs often seek fees beyond the 5 percent franchise fee allowed by the

statutory provision. The company therefore asks us to clarify that any costs that an LFA requires a cable provider to pay beyond the exceptions listed in Section 622—including generally applicable taxes, PEG capital costs, and ''incidental charges''—count toward the 5 percent cap. OPASTCO asserts that higher fees discourage investment and often will need to be passed on to consumers. Verizon also requests that we clarify that fees that exceed the cap are unreasonable.

100. AT&T argues that we should find unreasonable any fees or contribution requirements that are not credited toward the franchise fee obligation. AT&T also asserts that any financial obligation to the franchising authority that a provider undertakes, such as application or acceptance fees that exceed the reasonable cost of processing an application, free or discounted service to an LFA, and LFA attorney or consultant fees, should apply toward the franchise fee obligation.

101. Conversely, NATOA asserts that costs such as those enumerated above by AT&T fall within Section 622(g)(2)(D)'s definition of charges ''incidental'' to granting the franchise. NATOA contends that the word ''incidental'' does not refer to the *amount* of the charge, but rather the fact that a charge is ''naturally appertaining'' to the grant of a franchise. Thus, NATOA argues, these costs are not part of the franchise fee and therefore do not count toward the cap.

102. There is nothing in the text of the statute or the legislative history to suggest that Congress intended the list of exceptions in Section 622(g)(2)(D) to include the myriad additional expenses that some LFAs argue are ''incidental.'' Given that the lack of clarity on this issue may hinder competitive deployment and lead to unreasonable refusals to award competitive franchises under Section 621, we seek to provide guidance as to what is ''incidental'' for a new competitive application. We find that the term ''incidental'' in Section 622(g)(2)(D) should be limited to the list of incidentals in the statutory provision, as well as other minor expenses, as described below. We find instructive a series of Federal court decisions relating to this subsection of Section 622. These courts have indicated that (i) There are significant limits on what payments qualify as ''incidental'' and may be requested outside of the 5 percent fee limitation; and (ii) processing fees, consultant fees, and attorney fees are not necessarily to be regarded as ''incidental'' to the awarding of a franchise. In *Robin Cable Systems* v. *City of Sierra Vista*, for example, the United States District Court for the District of Arizona held that ''processing costs'' of up to $30,000 required as part of the award of a franchise were not excluded under subsection (g)(2)(D) because they were not ''incidental,'' but rather ''substantial'' and therefore ''inconsistent with the Cable Act.'' Additionally, in *Time Warner Entertainment* v. *Briggs*, the United States District Court for the District of Massachusetts decided that attorney fees and consultant fees fall within the definition of franchise fees, as defined in Section 622. Because the municipality in that case was already collecting 5 percent of the operator's gross revenues, the Court determined that a franchise provision requiring the cable operator to pay such fees above and beyond its 5 percent gross revenues was preempted and therefore unenforceable. Finally, in *Birmingham Cable Comm.* v. *City of Birmingham*, the United States District for the Northern District of Alabama stated that ''it would be an aberrant construction of the phrase 'incidental to the awarding * * * of the franchise,' in this context, to conclude that the phrase embraces consultant fees incurred solely by the City.''

103. We find these decisions instructive and emphasize that LFAs must count such non-incidental franchise-related costs toward the cap. We agree with these judicial decisions that non-incidental costs include the items discussed above, such as attorney fees and consultant fees, but may include other items, as well. Examples of other items include application or processing fees that exceed the reasonable cost of processing the application, acceptance fees, free or discounted services provided to an LFA, any requirement to lease or purchase equipment from an LFA at prices higher than market value, and in-kind payments as discussed below. Accordingly, if LFAs continue to request the provision of such in-kind services and the reimbursement of franchise-related costs, the value of such costs and services should count towards the provider's franchise fee payments. To the extent that an LFA requires franchise fee payments of less than 5 percent an offset may not be necessary. Such LFAs are able to request the reimbursement or provision of such costs up to the 5 percent statutory threshold. For future guidance, LFAs and video service providers may look to judicial cases to determine other costs that should be considered ''incidental.''

104. In-kind payments unrelated to provision of cable service. The record indicates that in the context of some franchise negotiations, LFAs have demanded from new entrants payments or in-kind contributions that are unrelated to the provision of cable services. While many parties argue that franchising authority requirements unrelated to the provision of cable services are unreasonable, few parties provided specific details surrounding the in-kind payment demands of LFAs. Some LFAs argue that commenters' allegations about inappropriate fees fail to identify the LFAs in question. As a consequence, they contend, we should not rely on such unsubstantiated claims unless the particular LFAs in question are given a chance to respond. We need not resolve particular disputes between parties, however, in order to address this issue. Our clarification that all LFA requests not related to cable services must be counted toward the 5 percent cap is a matter of statutory construction, and all commenters have had ample opportunity to address this issue. As discussed further below, most parties generally discussed examples of concessions, but were unwilling to provide details of specific instances, including the identity of the LFA requesting the unrelated services. Even without specific details concerning the LFAs involved, however, the record adequately supports a finding that LFA requests unrelated to the provision of cable services have a negative impact on the entry of new cable competitors in terms of timing and costs and may lead to unreasonable refusals to award competitive franchises. Accordingly, we clarify that any requests made by LFAs that are unrelated to the provision of cable services by a new competitive entrant are subject to the statutory 5 percent franchise fee cap.

105. The Broadband Service Providers Association states that an example of a municipal capital requirement can include traffic light control systems. FTTH Council states that non-video requirements raise the cost of entry for new entrants and should be prohibited. As an example, FTTH Council asserts that in San Antonio, Grande Communications was required to prepay $1 million in franchise fees (which took the company five years to draw down) and to fund a $50,000 scholarship, with an additional $7,200 to be contributed each year. They assert that new entrants agree to these requirements because they have no alternative. The National Telecommunications Cooperative Association (''NTCA'') also asserts that its members have complained that LFAs require them to accept franchise terms unrelated to the provision of video service. NTCA states that any

incumbent cable operator that already abides by such a requirement has made the concession in exchange for an exclusive franchise, but that new entrants, in contrast, must fight for every subscriber and will not survive if forced into expensive non-video related projects.

106. AT&T refers to a press article stating that Verizon has faced myriad requests unrelated to the provision of cable service. These include: a $13 million ''wish list'' in Tampa, Florida; a request for video hookup for a Christmas celebration and money for wildflower seeds in New York; and a request for fiber on traffic lights to monitor traffic in Virginia. Verizon provides little additional information about these examples, but argues that any requests must be considered franchise-related costs subject to the 5 percent franchise fee cap, as discussed above.

107. We clarify that any requests made by LFAs unrelated to the provision of cable services by a new competitive entrant are subject to the statutory 5 percent franchise fee cap, as discussed above. Municipal projects unrelated to the provision of cable service do not fall within any of the exempted categories in Section 622(g)(2) of the Act and thus should be considered a ''franchise fee'' under Section 622(g)(1). The legislative history of the 1984 Cable Act supports this finding, providing that ''lump sum grants not related to PEG access for municipal programs such as libraries, recreation departments, detention centers or other payments not related to PEG access would be subject to the 5 percent limitation.'' Accordingly, any such requests for municipal projects will count towards the 5 percent cap.

108. Contributions in support of PEG services and equipment. As further discussed in the Section below, we also consider the question of the proper treatment of LFA-mandated contributions in support of PEG services and equipment. The record reflects that disputes regarding such contributions are impeding video deployment and may be leading to unreasonable refusals to award competitive franchises. Section 622(g)(2)(C) excludes from the term ''franchise fee'' any ''capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.'' Accordingly, payments of this type, if collected only for the cost of building PEG facilities, are not subject to the 5 percent limit. Capital costs refer to those costs incurred in or associated with the construction of PEG access facilities. These costs are distinct from payments in support of the use of PEG access facilities. PEG support payments may include, but are not limited to, salaries and training. Payments made in support of PEG access facilities are considered franchise fees and are subject to the 5 percent cap. While Section 622(g)(2)(B) excluded from the term franchise fee any such payments made in support of PEG facilities, it only applies to any franchise in effect on the date of enactment. Thus, for any franchise granted after 1984, this exemption from franchise fees no longer applies.

4. PEG/Institutional Networks

109. In the *Local Franchising NPRM*, we tentatively concluded that it is not unreasonable for an LFA, in awarding a franchise, to ''require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support'' because this promotes important statutory and public policy goals. However, pursuant to Section 621(a)(1), we conclude that LFAs may not make unreasonable demands of competitive applicants for PEG and I–Net and that conditioning the award of a competitive franchise on applicants agreeing to such unreasonable demands constitutes an unreasonable refusal to award a franchise. An I–Net is defined as ''a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential customers.'' 47 U.S.C. 531(f). This finding is limited to competitive applicants under Section 621(a)(1). Yet, as this issue is also germane to existing franchisees, we ask for further comment on the applicability of this and other findings in the *Further Notice of Proposed Rulemaking*. The FNPRM tentatively concludes that the findings in this *Order* should apply to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs.

110. As an initial matter, we conclude that we have the authority to address issues relating to PEG and I–Net support. Some commenters argue that Congress explicitly granted the responsibility for PEG and I–Net regulation to State and local governments. For example, NATOA contends that we cannot limit the in-kind or monetary support that LFAs may request for PEG access, because Sections 624(a) and (b) allow an LFA to establish requirements ''related to the establishment and operation of a cable system,'' including facilities and equipment. In response, Verizon claims that PEG requirements should extend only to channel capacity, and that LFAs can obtain other contributions only to the extent that they are agreed to voluntarily by the cable operator. Verizon also asserts that the record confirms that LFAs often demand PEG support that exceeds statutory limits.

111. Section 611(a) of the Communications Act operates as a restriction on the authority of the franchising authority to establish channel capacity requirements for PEG. This Section provides that ''[a] franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.'' Section 611(b) allows a franchising authority to require that ''channel capacity be designated for public, educational or governmental use,'' but the extent of such channel capacity is not defined. Section 621(a)(4)(b) provides that a franchising authority may require ''adequate assurance'' that the cable operator will provide ''adequate'' PEG access channel capacity, facilities, or financial support.'' Because the statute does not define the term ''adequate,'' we have the authority to interpret what Congress meant by ''adequate PEG access channel capacity, facilities, and financial support,'' and to prohibit excessive LFA demands in this area, if necessary. We note that the legislative history does not define ''adequate,'' nor does it provide any guidance as to what Congress meant by the term. We therefore conclude that ''adequate'' should be given its plain meaning: the term does not mean significant but rather ''satisfactory or sufficient.'' As discussed above, we have also accepted the tentative conclusion of the *Local Franchising NPRM* that Section 621(a)(1) prohibits not only the ultimate refusal to award a competitive franchise, but also the establishment of procedures and other requirements that have the effect of unreasonably interfering with the ability of a would-be competitor to obtain a competitive franchise. Given this conclusion and our authority to interpret the term ''adequate'' in Section 621(a)(4), we will provide guidance as to what constitutes ''adequate'' PEG support under that provision as subject to the constraints of the ''reasonableness'' requirement in Section 621(a)(1).

112. AT&T asserts that we should shorten the period for franchise negotiations by adopting standard terms for PEG channels. We reject this suggestion and clarify that LFAs are free to establish their own requirements for

PEG to the extent discussed herein, provided that the non-capital costs of such requirements are offset from the cable operator's franchise fee payments. This is consistent with the Act and the historic management of PEG requirements by LFAs.

113. Consumers for Cable Choice and Verizon argue that it is unreasonable for an LFA to request a number of PEG channels from a new entrant that is greater than the number of channels that the community is using at the time the new entrant submits its franchise application. We find that it is unreasonable for an LFA to impose on a new entrant more burdensome PEG carriage obligations than it has imposed upon the incumbent cable operator.

114. Some commenters also asked whether certain requirements regarding construction or financial support of PEG facilities and I–Nets are unreasonable under Section 621(a)(1). Several parties indicate that, as a general matter, PEG contributions should be limited to what is ''reasonable'' to support ''adequate'' facilities. We agree that PEG support required by an LFA in exchange for granting a new entrant a franchise should be both adequate and reasonable, as discussed above. In addressing each of these concerns below, we seek to strike the necessary balance between the two statutory terms.

115. Ad Hoc Telecom Manufacturers argue that it is unreasonable to require the payment of ongoing costs to operate PEG channels, because a requirement is unrelated to right-of-way management, the fundamental policy rationale for an LFA's franchising authority. In response, Cablevision asserts that exempting incumbent LECs from PEG support requirements would undermine the key localism features of franchise requirements, and could undermine the ability of incumbent cable operators to provide robust community access. We disagree with Ad Hoc Telecom Manufacturers that it is *per se* unreasonable for LFAs to require the payment of ongoing costs to support PEG. Such a ruling would be contrary to Section 621(a)(4)(B) and public policy. We note, however, that any ongoing LFA-required PEG support costs are subject to the franchise fee cap, as discussed above.

116. FTTH Council, Verizon, and AT&T asked us to affirm that PEG or I–Net requirements imposed on a new entrant that are wholly duplicative of existing requirements imposed on the incumbent cable operator are *per se* unreasonable. AT&T and Verizon argue that Section 621(a)(4)(B) requires adequate facilities, not duplicative facilities. FTTH Council contends that if LFAs can require duplicative facilities, they can burden new entrants with inefficient obligations without increasing the benefit to the public. FTTH Council thus suggests that LFAs be precluded from imposing completely duplicative requirements, and that we require new entrants to contribute a *pro rata* share of the incumbent cable operator's PEG obligations. For example, if an incumbent cable operator funds a PEG studio, the new entrant should be required to contribute a *pro rata* share of the ongoing financial obligation for such studio, based on the new entrant's number of subscribers.

117. In addition to advocating a *pro rata* contribution rule, FTTH Council requests that we require incumbents to permit new entrants to connect with the incumbent's pre-existing PEG channel feeds. FTTH Council proposes that the incumbent cable operator and new entrant decide how to accomplish this connection, with LFA involvement if necessary, and that the costs of the connection should be deducted from the new entrant's PEG-related financial obligations to the LFA. Others agree that PEG interconnection is necessary to maximize the value of local access channels when more than one video provider operates in a community. New entrants seek a *pro rata* contribution rule based on practical constraints as well. AT&T asserts that, although incumbent cable operators can provide space for PEG in local headend buildings, LEC new entrants' facilities are not designed to accommodate those needs. Thus, if duplicative facilities are demanded, new entrants would have to build or rent facilities solely for this purpose, which AT&T contends would be unreasonable under the statute. NATOA counters that AT&T's complaint regarding space mischaracterizes PEG studio requirements that exist in some franchises. Specifically, NATOA claims that LFAs generally are not concerned with a PEG studio's location, and that PEG studios are usually located near cable headends simply because those locations reduce the cable operators' costs.

118. We agree with AT&T, FTTH Council, Verizon, and others that completely duplicative PEG and I–Net requirements imposed by LFAs would be unreasonable. If a new entrant, for technical, financial, or other reasons, is unable to interconnect with the incumbent cable operator's facilities, it would not be unreasonable for an LFA to require the new entrant to assume the responsibility of providing comparable facilities, subject to the limitations discussed herein. Such duplication generally would be inefficient and would provide minimal additional benefits to the public, unless it was required to address an LFA's particular concern regarding redundancy needed for, for example, public safety. We clarify that an I–Net requirement is not duplicative if it would provide additional capability or functionality, beyond that provided by existing I–Net facilities. We note, however, that we would expect an LFA to consider whether a competitive franchisee can provide such additional functionality by providing financial support or actual equipment to supplement existing I–Net facilities, rather than by constructing new I–Net facilities. Finally, we find that it is unreasonable for an LFA to refuse to award a competitive franchise unless the applicant agrees to pay the face value of an I–Net that will not be constructed. Payment for I–Nets that ultimately are not constructed are unreasonable as they do not serve their intended purpose.

119. While we prefer that LFAs and new entrants negotiate reasonable PEG obligations, we find that under Section 621 it is unreasonable for an LFA to require a new entrant to provide PEG support that is in excess of the incumbent cable operator's obligations. We also agree that a *pro rata* cost sharing approach is one reasonable means of meeting the statutory requirement of the provision of adequate PEG facilities. To the extent that a new entrant agrees to share *pro rata* costs with the incumbent cable operator, such an arrangement is *per se* reasonable. To determine a new entrant's *per se* reasonable PEG support payment, the new entrant should determine the incumbent cable operator's per subscriber payment at the time the competitive applicant applies for a franchise or submits its informational filing, and then calculate the proportionate fee based on its subscriber base. A new entrant may agree to provide PEG support over and above the incumbent cable operator's existing obligations, but such support is at the entrant's discretion. If the new entrant agrees to share the *pro rata* costs with the incumbent cable operator, the PEG programming provider, be it the incumbent cable operator, the LFA, or a third-party programmer, must allow the new entrant to interconnect with the existing PEG feeds. The costs of such interconnection should be borne by the new entrant. We note that we previously have required cost-sharing and interconnection for PEG channels and facilities in another context. Section 75.1505(d) of the Commission's rules

requires that if an LFA and OVS operator cannot reach an agreement on the OVS operator's PEG obligations, the operator is required to match the incumbent cable operator's PEG obligations and the incumbent cable operator is required to permit the OVS operator to connect with the existing PEG feeds, with such costs borne by the OVS operator.

5. Regulation of Mixed-Use Networks

120. We clarify that LFAs' jurisdiction applies only to the provision of cable services over cable systems. To the extent a cable operator provides non-cable services and/or operates facilities that do not qualify as a cable system, it is unreasonable for an LFA to refuse to award a franchise based on issues related to such services or facilities. For example, we find it unreasonable for an LFA to refuse to grant a cable franchise to an applicant for resisting an LFA's demands for regulatory control over non-cable services or facilities. Similarly, an LFA has no authority to insist on an entity obtaining a separate cable franchise in order to upgrade non-cable facilities. For example, assuming an entity (*e.g.*, a LEC) already possesses authority to access the public rights-of-way, an LFA may not require the LEC to obtain a franchise solely for the purpose of upgrading its network. So long as there is a non-cable purpose associated with the network upgrade, the LEC is not required to obtain a franchise until and unless it proposes to offer cable services. For example, if a LEC deploys fiber optic cable that can be used for cable and non-cable services, this deployment alone does not trigger the obligation to obtain a cable franchise. The same is true for boxes housing infrastructure to be used for cable and non-cable services.

121. We further clarify that an LFA may not use its video franchising authority to attempt to regulate a LEC's entire network beyond the provision of cable services. We agree with Verizon that the ''entirety of a telecommunications/data network is not automatically converted to a 'cable system' once subscribers start receiving video programming.'' For instance, we find that the provision of video services pursuant to a cable franchise does not provide a basis for customer service regulation by local law or franchise agreement of a cable operator's entire network, or any services beyond cable services. Local regulations that attempt to regulate any non-cable services offered by video providers are preempted because such regulation is beyond the scope of local franchising authority and is inconsistent with the definition of ''cable system'' in Section 602(7)(C). This provision explicitly states that a common carrier facility subject to Title II is considered a cable system ''to the extent such facility is used in the transmission of video programming * * *.'' As discussed above, revenues from non-cable services are not included in the base for calculation of franchise fees.

122. In response to requests that we address LFA authority to regulate ''interactive on-demand services,'' we note that Section 602(7)(C) excludes from the definition of ''cable system'' a facility of a common carrier that is used solely to provide interactive on-demand services. ''Interactive on-demand services'' are defined as ''service[s] providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.'' We do not address at this time what particular services may fall within the definition.

123. We note that this discussion does not address the regulatory classification of any particular video services being offered. We do not address in this *Order* whether video services provided over Internet Protocol are or are not ''cable services.''

D. Preemption of Local Laws, Regulations and Requirements

124. Having established rules and guidance to implement Section 621(a)(1), we turn now to the question of local laws that may be inconsistent with our decision today. Because the rules we adopt represent a reasonable interpretation of relevant provisions in Title VI as well as a reasonable accommodation of the various policy interests that Congress entrusted to the Commission, they have preemptive effect pursuant to Section 636(c). Alternatively, local laws are impliedly preempted to the extent that they conflict with this *Order* or stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

125. At that outset of this discussion, it is important to reiterate that we do not preempt State law or State level franchising decisions in this *Order.* Instead, we preempt only local laws, regulations, practices, and requirements to the extent that: (1) Provisions in those laws, regulations, practices, and agreements conflict with the rules or guidance adopted in this *Order;* and (2) such provisions are not specifically authorized by State law. As noted above, we conclude that the record before us does not provide sufficient information to make determinations with respect to franchising decisions where a State is involved, issuing franchises at the State level or enacting laws governing specific aspects of the franchising process. We expressly limit our findings and regulations in this *Order* to actions or inactions at the local level where a State has not circumscribed the LFA's authority. For example, in light of differences between the scope of franchises issued at the State level and those issued at the local level, it may be necessary to use different criteria for determining what may be unreasonable with respect to the key franchising issues addressed herein. We also recognize that many States only recently have enacted comprehensive franchise reform laws designed to facilitate competitive entry. In light of these facts, we lack a sufficient record to evaluate whether and how such State laws may lead to unreasonable refusals to award additional competitive franchises.

126. Section 636(c) of the Communications Act provides that ''any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this Act shall be deemed to be preempted and superseded.'' In the *Local Franchising NPRM,* the Commission tentatively concluded that, pursuant to the authority granted under Sections 621 and 636(c), and under the Supremacy Clause, the Commission may deem to be preempted any State or local law that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Title VI. For example, we may deem preempted any local law that causes an unreasonable refusal to award a competitive franchise in violation of Section 621(a)(1). Accordingly, the Commission sought comment on whether it would be appropriate to preempt State and local legislation to the extent we find that it serves as an unreasonable barrier to the grant of competitive franchises.

127. The doctrine of Federal preemption arises from the Supremacy Clause, which provides that Federal law is the ''supreme Law of the Land.'' Preemption analysis requires a statute-specific inquiry. There are various avenues by which State law may be superseded by Federal law. We focus on the two which are most relevant here. First, preemption can occur where Congress expressly preempts State law. When a Federal statute contains an express preemption provision, the preemption analysis consists of

identifying the scope of the subject matter expressly preempted and determining if a State's law falls within its scope. Second, preemption can be implied and can occur where Federal law conflicts with State law. Courts have found implied ''conflict preemption'' where compliance with both State and Federal law is impossible or where State law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''

128. Applying these principles to this proceeding, we find that local franchising laws, regulations, and agreements are preempted to the extent they conflict with the rules we adopt in this *Order.* Section 636(c) expressly preempts State and local laws that are inconsistent with the Communications Act. This provision precludes States and localities from acting in a manner inconsistent with the Commission's interpretations of Title VI so long as those interpretations are valid. It is the Commission's job, in the first instance, to determine the scope of the subject matter expressly preempted by Section 636. As noted elsewhere, we adopt the rules in this *Order* pursuant to our interpretation of Section 621(a)(1) and other relevant Title VI provisions in light of the twin congressional goals of promoting competition in the multichannel video marketplace and promoting broadband deployment. These rules represent a reasonable interpretation of relevant provisions in Title VI as well as a reasonable accommodation of the various policy interests that Congress entrusted to the Commission. They therefore have preemptive effect pursuant to Section 636(c).

129. Alternatively, we find that such local laws, regulations, and agreements are impliedly preempted to the extent that they conflict with this *Order* or stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Among the stated purposes of Title VI is to (1) ''Establish a national policy concerning cable communications,'' (2) ''establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community,'' and (3) ''promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.'' The legislative history to both the 1984 and 1992 Cable Acts identifies a national policy of encouraging competition in the multichannel video marketplace and recognizes the national implications that the local franchising process can have on that policy. The national policy of promoting a competitive multichannel video marketplace has been repeatedly reemphasized by Congress, the Commission, and the courts. The record here shows that the current operation of the franchising process at the local level conflicts with this national multichannel video policy by imposing substantial delays on competitive entry and requiring unduly burdensome conditions that deter entry. And to the extent that local requirements result in LFAs unreasonably refusing to award competitive franchises, such mandates frustrate the policy goals underlying Title VI. The rules we adopt today, *e.g.*, limits on the time period for LFA action on competitive franchise applications, limits on LFA's ability to impose build-out requirements, and limits on LFA collection of franchise fees, are designed to ensure efficiency and fairness in the local franchising process and to provide certainty to prospective marketplace participants. This, in turn, will allow us to effectuate Congress' twin goals of promoting cable competition and minimizing unnecessary and unduly burdensome regulation on cable systems. Thus, not only are Section 636(c)'s requirements for preemption satisfied, but preemption in these circumstances is proper pursuant to the Commission's judicially recognized ability, when acting pursuant to its delegated authority, to preempt local regulations that conflict with or stand as an obstacle to the accomplishment of Federal objectives.

130. We reject the claim by incumbent cable operators and franchising authorities that the Commission lacks authority to preempt local requirements because Congress has not explicitly granted the Commission the authority to preempt. These commenters suggest that because the Commission seeks to preempt a power traditionally exercised by a State or local Government (*i.e.*, local franchising), under the Fifth Circuit's decision in *City of Dallas,* the Commission can only preempt where it is given express statutory authority to do so. However, this argument ignores the plain language of Section 636(c), which states that ''any provision of law of any State, political subdivision, or agency therefore, or franchising authority * * * which is inconsistent with this chapter shall be deemed to be preempted and superseded.'' Moreover, Section 621 expressly limits the authority of franchising authorities by prohibiting exclusive franchises and unreasonable refusals to award additional competitive franchises. Congress could not have stated its intent to limit local franchising authority more clearly. These provisions therefore satisfy any express preemption requirement.

131. Furthermore, as long as the Commission acts within the scope of its delegated authority in adopting rules that implement Title VI, including the prohibition of Section 621(a)(1), its rules have preemptive effect. Courts assess whether an agency acted within the scope of its authority ''without any presumption one way or the other''; there is no presumption against preemption in this context. As noted above, Congress charged the Commission with the task of administering the Communications Act, including Title VI, and the Commission has clear authority to adopt rules implementing provisions such as Section 621. Consequently, our rules preempt any contrary local regulations.

132. We also find no merit in incumbent cable operators' and local franchising authorities' argument that the scope of the Commission's preemption authority under Section 636(c) is limited by the terms of Section 636(a) of the Act. Section 636(a) provides that nothing in Title VI ''shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this title.'' The very reason for preemption in these circumstances is that many local franchising laws and practices are at odds with the express provisions of Title VI, as interpreted in this *Order.* Consequently, Section 636(a) presents no obstacle to preemption here. We therefore need not decide whether the State and local laws at issue relate to ''matters of public health, safety, and welfare'' within the meaning of Section 636(a).

133. We also reject the franchising authorities' argument that any attempt to preempt lawful local government control of public rights-of-way by interfering with local franchising requirements, procedures and processes could constitute an unconstitutional taking under the Fifth Amendment of the United States Constitution. The ''takings'' clause of the Fifth Amendment provides: ''[N]or shall private property be taken for public use, without just compensation.'' We conclude that our actions here do not run afoul of the Fifth Amendment for several reasons. To begin with, our

actions do not result in a Fifth Amendment taking. Courts have held that municipalities generally do not have a compensable ''ownership'' interest in public rights-of-way, but rather hold the public streets and sidewalks in trust for the public. As one court explained, ''municipalities generally possess no rights to profit from their streets unless specifically authorized by the State.'' Also, we note that telecommunications carriers that seek to offer video service already have an independent right under State law to occupy rights-of-way. States have granted franchises to telecommunications carriers, pursuant to which the carriers lawfully occupy public rights-of-way for the purpose of providing telecommunications service. Because all municipal power is derived from the State, courts have held that ''a State can take public rights-of-way without compensating the municipality within which they are located.'' Given the municipality is not entitled to compensation when its interest in the streets are taken pursuant to State law, it is difficult to see how the transmission of additional video signals along those same lines results in any physical occupation of public rights-of-way beyond that already permitted by the States.

134. Moreover, even if there was a taking, Congress provided for ''just compensation'' to the local franchising authorities. Section 622(h)(2) of the Act provides that a local franchising authority may recover a franchise fee of up to 5 percent of a cable operator's annual gross revenue. Congress enacted the cable franchise fee as the consideration given in exchange for the right to use the public ways. In passing the 1984 Cable Act, Congress recognized local government's entitlement to ''assess the cable operator a fee for the operator's use of public ways,'' and established ''the authority of a city to collect a franchise fee of up to 5 percent of an operator's annual gross revenues.'' The implementing regulations we adopt today do not eviscerate the ability of local authorities to impose a franchise fee. Rather, our actions here simply ensure that the local franchising authority does not impose an excessive fee or other unreasonable costs in violation of the express statutory provisions and policy goals encompassed in Title VI. For the reasons stated above, we need not reach the issue of whether a ''taking'' has occurred with respect to a competitive applicant providing cable service over the same network it uses to provide telephone service, for which it is already authorized by the local government to use the public rights-of-way

135. Finally, LFAs maintain that the Commission's preemption of local governmental powers offends the Tenth Amendment of the U.S. Constitution. The Tenth Amendment provides that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'' In support of their position, commenters argue that the Commission is improperly attempting to override local government's duty to ''maximize the value of local property for the greater good'' by imposing a Federal regulatory scheme onto the States and/or local governments. Contrary to the local franchising authorities' claim, however, they have failed to demonstrate any violation of the Tenth Amendment. ''If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States.'' Thus, when Congress acts within the scope of its authority under the Commerce Clause, no Tenth Amendment issue arises. Regulation of cable services is well within Congress' authority under the Commerce Clause. Thus, because our authority in this area derives from a proper exercise of congressional power, the Tenth Amendment poses no obstacle to our preemption of State and local franchise law or practices. Likewise, there is no merit to LFA commenters' suggestion that Commission regulation of the franchising process would constitute an improper ''commandeering'' of State governmental power. The Supreme Court has recognized that ''where Congress has the authority to regulate private activity under the Commerce Clause,'' Congress has the ''power to offer States the choice of regulating that activity according to Federal standards or having State law preempted by Federal regulation.'' And here, we are simply requiring local franchising authorities to exercise their regulatory authority according to Federal standards, or else local requirements will be preempted. For all of these reasons, our actions today do not offend the Tenth Amendment.

136. We do not purport to identify every local requirement that this *Order* preempts. Rather, in accordance with Section 636(c), we merely find that local laws, regulations and, agreements are preempted to the extent they conflict with this *Order* and the rules adopted herein. For example, local laws would be preempted if they: (1) Authorize a local franchising authority to take longer than 90 days to act on a competitive franchise application concerning entities with existing authority to access public rights-of-way, and six months concerning entities that do not have authority to access public rights-of-way; (2) allow an LFA to impose unreasonable build-out requirements on competitive franchise applicants; or (3) authorize or require a local franchising authority to collect franchise fees in excess of the fees authorized by law.

137. One specific example of the type of local laws that this *Order* preempts are so-called ''level-playing-field'' requirements that have been adopted by a number of local authorities. We find that these mandates unreasonably impede competitive entry into the multichannel video marketplace by requiring LFAs to grant franchises to competitors on substantially the same terms imposed on the incumbent cable operators. As an initial matter, just because an incumbent cable operator may agree to franchise terms that are inconsistent with provisions in Title VI, LFAs may not require new entrants to agree to such unlawful terms pursuant to level-playing-field mandates because any such requirement would conflict with Title VI. Moreover, the record demonstrates that aside from this specific scenario, level-playing-field mandates imposed at the local level deter competition in a more fundamental manner. The record indicates that in today's market, new entrants face ''steep economic challenges'' in an ''industry characterized by large fixed and sunk costs,'' without the resulting benefits incumbent cable operators enjoyed for years as monopolists in the video services marketplace. According to commenters, ''a competitive video provider who enters the market today is in a fundamentally different situation'' from that of the incumbent cable operator: ''[w]hen incumbents installed their systems, they had a captive market,'' whereas new entrants ''have to 'win' every customer from the incumbent'' and thus do not have ''anywhere near the number of subscribers over which to spread the costs.'' Commenters explain that ''unlike the incumbents who were able to pay for any of the concessions that they grant an LFA out of the supra-competitive revenue from their on-going operations,'' ''new entrants have no assured market position.'' Based on the record before us, we thus find that an LFAs refusal to award an additional competitive franchise unless the competitive applicant meets substantially all the terms and

conditions imposed on the incumbent cable operator may be unreasonable, and inconsistent with the ''unreasonable refusal'' prohibition of Section 621(a)(1). Accordingly, to the extent a locally-mandated level-playing-field requirement is inconsistent with the rules, guidance, and findings adopted in this *Order*, such requirement is deemed preempted. We also find troubling the record evidence that suggests incumbent cable operators use ''level-playing-field'' requirements to frustrate negotiations between LFAs and competitive providers, causing delay and preventing competitive entry.

IV. Procedural Matters

138. *Paperwork Reduction Act Analysis.* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

139. In this present document, we have assessed the effects of the application filing requirements used to calculate the time frame in which a local franchising authority shall make a decision, and find that those requirements will benefit companies with fewer than 25 employees by providing such companies with specific application requirements of a reasonable length. We anticipate this specificity will streamline this process for companies with fewer than 25 employees, and that these requirements will not burden those companies.

140. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this *Report and Order.*

141. *Congressional Review Act.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

142. *Additional Information.* For additional information concerning the PRA proposed information collection requirements contained in this *Report and Order,* contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov.*

Final Regulatory Flexibility Act Analysis

143. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rulemaking* (''NPRM'') to this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received one comment on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

Need for, and Objectives of, the Report and Order

144. This Report and Order (''*Order*'') adopts rules and provides guidance to implement Section 621 of the Communications Act of 1934, as amended (the ''Communications Act''). Section 621 of the Communications Act prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. The Commission has found that the current franchising process constitutes an unreasonable barrier to entry for competitive entrants that impedes enhanced cable competition and accelerated broadband deployment. The Commission also has determined that it has authority to address this problem. To eliminate the unreasonable barriers to entry into the cable market, and to encourage investment in broadband facilities, in this *Order* the Commission (1) Adopts maximum time frames within which local franchising authorities (''LFAs'') must grant or deny franchise applications (90 days for new entrants with existing access to rights-of-way and six months for those who do not); (2) prohibits LFAs from imposing unreasonable build-out requirements on new entrants; (3) identifies certain costs, fees, and other compensation which, if required by LFAs, must be counted toward the statutory 5 percent cap on franchise fees; (4) interprets new entrants' obligations to provide support for PEG channels and facilities and institutional networks (''I–Nets''); and (5) clarifies that LFA authority is limited to regulation of cable services, not mixed-use services. The Commission also preempts local laws, regulations, and franchise agreement requirements, including level-playing-field provisions, to the extent they impose greater restrictions on market entry for competitive entrants than what the *Order* allows. The rule and guidelines are adopted in order to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. For the specific language of the rule adopted, see Rule Changes.

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

145. Only one commenter, Sjoberg's, Inc. submitted a comment that specifically responded to the IRFA. Sjoberg's, Inc. contends that small cable operators are directly affected by the adoption of rules that treat competitive cable entrants more favorably than incumbents. Sjoberg's Inc. argues that small cable operators are not in a position to compete with large potential competitors. These arguments were considered and rejected as discussed below.

146. We disagree with Sjoberg's Inc. assertion that our rules will treat competitive cable entrants more favorably than incumbents. While the actions we take in the *Order* will serve to increase competition in the multichannel video programming (''MVPD'') market, we do not believe that the rules we adopt in the *Order* will put any incumbent provider at a competitive disadvantage. In fact, we believe that incumbent cable operators are at a competitive advantage in the MVPD market; incumbent cable operators have the competitive advantage of an existing customer base and significant brand recognition in their existing markets. Furthermore, we ask in the *Further Notice of Proposed Rulemaking* whether the findings adopted in the *Order* should apply to existing cable operators and tentatively conclude that they should.

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

Entities Directly Affected By Proposed Rules

147. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has

the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

148. The rules adopted by this *Order* will streamline the local franchising process by adopting rules that provide guidance as to what constitutes an unreasonable refusal to grant a cable franchise. The Commission has determined that the group of small entities directly affected by the rules adopted herein consists of small governmental entities (which, in some cases, may be represented in the local franchising process by not-for-profit enterprises). Therefore, in this FRFA, we consider the impact of the rules on small governmental entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

149. *Small governmental jurisdictions.* Small governmental jurisdictions are ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Miscellaneous Entities

150. The entities described in this section are affected merely indirectly by our current action, and therefore are not formally a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our conclusions.

Cable Operators

151. The ''Cable and Other Program Distribution'' census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed a small business size standard for this census category, which includes all such companies generating $13.0 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

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

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

154. *Open Video Services.* Open Video Service (''OVS'') systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.0 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Telecommunications Service Entities

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

156. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most

providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

157. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

158. The rule and guidance adopted in the Order will require de minimus additional reporting, recordkeeping, and other compliance requirements. The most significant change requires potential franchisees to file an application to mark the beginning of the franchise negotiation process. This filing requires minimal information, and we estimate that the average burden on applicants to complete this application is one hour. The franchising authority will review this application in the normal course of its franchising procedures. The rule will not require any additional special skills beyond any already needed in the cable franchising context.

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

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

160. In the NPRM, the Commission sought comment on the impact that rules interpreting Section 621(a)(1) might have on small entities, and on what effect alternative rules would have on those entities. The Commission also invited comment on ways in which the Commission might implement Section 621(a)(1) while at the same time impose lesser burdens on small entities. The Commission tentatively concluded that any rules likely would have at most a de minimis impact on small governmental jurisdictions, and that the interrelated, high-priority Federal communications policy goals of enhanced cable competition and accelerated broadband deployment necessitated the establishment of specific guidelines for LFAs with respect to the process by which they grant competitive cable franchises. We agree with those tentative conclusions, and we believe that the rules adopted in the Order will not impose a significant impact on any small entity.

161. In the Order, we provide that LFAs should reasonably review franchise applications within 90 days for entities existing authority to access rights-of way, and within six months for entities that do not have such authority. This will result in decreasing the regulatory burdens on cable operators. We declined to adopt shorter deadlines that commenters proposed (e.g., 17 days, one month) in order to provide small entities more flexibility in scheduling their franchise negotiation sessions. In the Order, we also provide guidance on whether an LFA may reasonably refuse to award a competitive franchise based on certain franchise requirements, such as build-out requirements and franchise fees. As an alternative, we considered providing no guidance on any franchising terms. We conclude that the guidance we provide minimizes any adverse impact on small entities because it clarifies the terms within which parties must negotiate, and should prevent small entities from facing costly litigation over those terms.

Report to Congress

162. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

163. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303r, 403 and 405 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 303(r), 403, this Report and Order is adopted.

164. *It is further ordered* that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 303a, 303b, and 307, the Commission's rules are hereby amended as set forth in the rule changes. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

165. *It is further ordered* that the rules in § 76.41 contains information collection requirements that have not been approved by OMB, subject to the Paperwork Reduction Act. The Federal Communications Commission will publish a document announcing the effective date upon OMB approval.

List of Subjects in 47 CFR Part 76

Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

■ 2. Add Subpart C to part 76 to read as follows:

Subpart C—Cable Franchise Applications

§ 76.41 Franchise application process.

(a) Definition. *Competitive franchise applicant.* For the purpose of this section, an applicant for a cable franchise in an area currently served by another cable operator or cable operators in accordance with 47 U.S.C. 541(a)(1).

(b) A competitive franchise applicant must include the following information in writing in its franchise application, in addition to any information required by applicable State and local laws:

(1) The applicant's name;

(2) The names of the applicant's officers and directors;

(3) The business address of the applicant;

(4) The name and contact information of a designated contact for the applicant;

(5) A description of the geographic area that the applicant proposes to serve;

(6) The PEG channel capacity and capital support proposed by the applicant;

(7) The term of the agreement proposed by the applicant;

(8) Whether the applicant holds an existing authorization to access the public rights-of-way in the subject franchise service area as described under paragraph (b)(5) of this section;

(9) The amount of the franchise fee the applicant offers to pay; and

(10) Any additional information required by applicable State or local laws.

(c) A franchising authority may not require a competitive franchise applicant to negotiate or engage in any regulatory or administrative processes prior to the filing of the application.

(d) When a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must grant or deny the application within 180 days of the date the application is received by the franchising authority. A franchising authority and a competitive franchise applicant may agree in writing to extend the 90-day or 180-day deadline, whichever is applicable.

(e) If a franchising authority does not grant or deny an application within the time limit specified in paragraph (d) of this section, the competitive franchise applicant will be authorized to offer service pursuant to an interim franchise in accordance with the terms of the application submitted under paragraph (b) of this section.

(f) If after expiration of the time limit specified in paragraph (d) of this section a franchising authority denies an application, the competitive franchise applicant must discontinue operating under the interim franchise specified in paragraph (e) of this section unless the franchising authority provides consent for the interim franchise to continue for a limited period of time, such as during the period when judicial review of the franchising authority's decision is pending. The competitive franchise applicant may seek judicial review of the denial under 47 U.S.C. 555.

(g) If after expiration of the time limit specified in paragraph (d) of this section a franchising authority and a competitive franchise applicant agree on the terms of a franchise, upon the effective date of that franchise, that franchise will govern and the interim franchise will expire.

[FR Doc. E7–5119 Filed 3–20–07; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01; I.D. 031507D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 first seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher processor vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 17, 2007, through 1200 hrs, A.l.t., April 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2007 first seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI is 18,555 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007), for the period 1200 hrs, A.l.t., January 20, 2007, through 1200 hrs, A.l.t., April 1, 2007. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2007 first seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 17,705 mt, and is setting aside the remaining 850 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 14, 2007.

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

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

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

Dated: March 16, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–1381 Filed 3–16–07; 1:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01; I.D. 031507E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the B season allowance of the 2007 total allowable catch (TAC) of pollock specified for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2007, through 1200 hrs, A.l.t., March 18, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 2, 2007.

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

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *inseason-fakr@noaa.gov* and include in the subject line of the e-mail comment and in the body of the email the document identifier: ''g61plk2ro1'' (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on March 13, 2007 (72 FR 11288, March 13, 2007).

NMFS has determined that approximately 4,100 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the B season allowance of the 2007 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA, effective 1200 hrs, A.l.t., March 18, 2007.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 14, 2007.

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

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 2, 2007.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 16, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–1382 Filed 3–16–07; 1:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01; I.D. 112206B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; 2007 and 2008 Final Harvest Specifications for Groundfish; Correction

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

ACTION: Final rule; correction.

SUMMARY: On March 5, 2007, NMFS published a final rule implementing 2007 and 2008 final harvest specifications, reserves and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). Table 10 of that document identifies the apportionment of Pacific halibut PSC trawl limits between the trawl gear and deep-water species complex and the shallow-water species complex. The heading to Table 10 indicated that the final apportionments were for fishing years 2006 and 2007 rather than for 2007 and 2008. In addition, Table 20 of that document contained the final 2007 and 2008 rockfish program halibut mortality limits for the catcher/processor and catcher vessel sectors. That table also contained inadvertent errors. This final rule document corrects errors published in the final harvest specifications.

DATES: Effective March 5, 2007, through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780, or e-mail at *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone under the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP). The North Pacific Fishery Management Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

On March 5, 2007, NMFS published a final rule (72 FR 9676) announcing specifications for the 2007 and 2008 fishing years for the groundfish fishery in the GOA. The intended effect of the action is to conserve and manage the groundfish resources in the GOA. In the final specification document NMFS announced the apportionment of PSC trawl limits between the trawl gear deep-water species complex and the shallow-water species complex. However, NMFS inadvertently indicated that the apportionment was for fishing years 2006 and 2007 rather than 2007 and 2008. This document corrects the error and republishes Table 10 in its entirety. In addition, section 679.82(d)(7) establishes sideboards to limit the ability of participants eligible for the Rockfish Program to catch fish in fisheries other than the Central GOA rockfish fisheries. Table 20 identifies the final 2007 and 2008 halibut mortality limits for the rockfish program. However, the rockfish program halibut mortality limits identified in Table 20 were inadvertently placed in reverse order among the columns. This document corrects the errors and republishes Table 12 in its entirety.

Correction

Accordingly, the final rule published on March 5, 2007, at 72 FR 9676 (FR Doc. E7–3775) is corrected as follows:

1. On page 9689, Table 10 is corrected and republished in its entirety to read as follows:

TABLE 10 – FINAL 2007 AND 2008 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX (VALUES ARE IN METRIC TONS)

Season	Shallow-water	Deep-water	Total
January 20–April 1	450	100	550
April 1–July 1	100	300	400
July 1–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal January 20–October 1	900	800	1,700
October 1–December 31[1]	n/a	n/a	300
Total	n/a	n/a	2,000

[1]No apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1 – December 31).

2. On page 9700, Table 20 is corrected and republished in its entirety to read as follows:

TABLE 20 – FINAL 2007 AND 2008 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR AND CATCHER VESSEL SECTORS (VALUES ARE ROUNDED TO NEAREST METRIC TON)

Sector	Shallow-water complex halibut PSC sideboard ratio	Deep-water complex halibut PSC sideboard ratio	Annual halibut mortality limit (mt)	Annual shallow-water complex halibut PSC sideboard limit (mt)	Annual deep-water complex halibut PSC sideboard limit (mt)
Catcher/processor	0.54	3.99	2,000	11	80
Catcher vessel	6.32	1.08	2,000	126	22

Dated: March 14, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–5074 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 54
Wednesday, March 21, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124 and 1131

[Docket No. AO–14–A77, *et al.*; DA–07–02]

Milk in the Northeast and Other Marketing Areas; Reconvening of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule; Notice of reconvened public hearing on proposed rulemaking.

SUMMARY: This notice announces the reconvening of the hearing which began on February 26, 2007, in Strongsville, Ohio, to consider proposals to amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

DATES: The hearing will reconvene at 1 p.m. on Monday, April 9, 2007.

ADDRESSES: The reconvened hearing will be held at the Radisson Hotel City Centre Indianapolis, 31 West Ohio Street, Indianapolis, Indiana 46204, *telephone:* (317) 635–2000.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 720–2357, e-mail address *jack.rower@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail *phuber@fmmaclev.com* before the hearing begins.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Issued February 5, 2007; published February 9, 2007 (72 FR 6179).

Supplemental Hearing Notice: Issued February 14, 2007; published February 20, 2007 (72 FR 7753).

Notice is hereby given that the hearing which was adjourned in Strongsville, Ohio, on March 2, 2007, by the Administrative Law Judge designated to hold said hearing and preside thereof, will reconvene in session at 1 p.m., April 9, 2007, at the Radisson Hotel City Centre Indianapolis, 31 West Ohio Street, Indianapolis, Indiana 46204. At the reconvened hearing, additional testimony will be received on proposed amendments 1 through 20, listed in the hearing notice (72 FR 6179) and the supplemental hearing notice (72 FR 7753) to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124 and 1131

Milk marketing orders.

Authority: 7 U.S.C. 601–674, and 7253.

Dated: March 15, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5109 Filed 3–20–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–016]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Ocean City Maryland Offshore Challenge'', a power boat race to be held on the waters of the Atlantic Ocean adjacent to the shoreline at Ocean City, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before April 20, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 391–8149. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this

rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On June 16 and 17, 2007, the Offshore Performance Association, Inc. will conduct the ''Ocean City Maryland Offshore Challenge'', on the waters of the Atlantic Ocean along the shoreline near Ocean City, MD. The event will consist of approximately 45 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Ocean City, MD. The regulated area includes a section of the Atlantic Ocean approximately two miles long, and one half mile wide, the course is approximately 300 yards offshore and runs parallel with the Ocean City, Maryland shoreline. The southern boundary of the regulated area is adjacent to and due east of 5th street and the northern boundary of the area is adjacent to and due east of 43rd Street at Ocean City, Maryland. The temporary special local regulations will be enforced from 9 a.m. to 5 p.m. on June 16 and 17, 2007, and will restrict general navigation in the regulated area during the power boat race. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a small segment of the Atlantic Ocean near Ocean City, MD during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be enforced. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the Atlantic Ocean during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Although the regulated area will apply to waters of the Atlantic Ocean near the Ocean City, Maryland shoreline, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. In the case where the patrol commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary *§ 100.35–T05–016* to read as follows:

§ 100.35–T05–016 Atlantic Ocean, Ocean City, MD.

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′01″ N, longitude 075°03′56″ W, thence easterly to latitude 38°21′50″ N, longitude 075°03′28″ W, thence southwesterly to latitude 38°20′10″ N, longitude 075°04′08″ W, thence westerly to a position near the shoreline at latitude 38°20′15″ N, longitude 075°04′38″ W, thence northerly along the shoreline to the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Ocean City Maryland Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) All persons and vessels shall comply with the instructions of the Official Patrol.

(4) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 5 p.m. on June 16 and 17, 2007.

Dated: March 9, 2007.

L.L. Hereth,

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

[FR Doc. E7–5142 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–020]

RIN 1625–AA08

Special Local Regulations for Marine Events; Delaware River, Delaware City, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations during the ''7th Annual Escape from Fort Delaware Triathlon'', an event to be held June 9, 2007 on the waters of Delaware River at Delaware City, DE. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Delaware River during the 7th Annual Escape from Fort Delaware Triathlon.

DATES: Comments and related material must reach the Coast Guard on or before April 20, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 391–8149, or e-mail them to *Dennis.M.Sens@uscg.mil.* The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. M. Sens, Project Manager, Compliance and Inspection Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On June 9, 2007, the Escape from Fort Delaware Triathlon, Inc. will sponsor the ''7th Annual Escape from Fort Delaware Triathlon''. The swimming segment of the event will consist of approximately 500 swimmers competing across a one mile course along the Delaware River between Pea Patch Island and Delaware City, Delaware. The competition will begin at Pea Patch Island. The participants will swim across to the finish line located at the Delaware City Wharf, swimming approximately one mile, across Bulkhead Shoal Channel. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Delaware River between Fort Delaware on Pea Patch Island and the Delaware City Wharf at Delaware City, Delaware. The temporary special local regulations will be in effect from 5:30 a.m. to 10:30 a.m. on June 9, 2007. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic may be allowed to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation restricts vessel traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and radio stations so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Delaware River during the event.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 5:30 a.m. to 10:30 a.m. on June 9, 2007. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity

and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35–T05–020 to read as follows:

§ 100.35–T05–020, Delaware River, Delaware City, DE.

(a) Regulated area. The regulated area includes all waters of the Delaware River within 500 yards either side of a line drawn southwesterly from a point near the shoreline at Pea Patch Island, at latitude 39°35′08″ N, 075°34′18″ W, thence to latitude 39°34′43.6'' N, 075°35′13″ W, a position located near the Delaware City Wharf, Delaware City, DE. All coordinates reference Datum NAD 1983.

(b) Definitions:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) Enforcement period. This section will be enforced from 5:30 a.m. to 10:30 a.m. on June 9, 2007.

Dated: March 9, 2007.

Larry L. Hereth,

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

[FR Doc. E7–5144 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I

Meeting of Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, 10), notice is hereby given of the sixth meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area (GGNRA).

DATES: The Committee will meet on Thursday, April 5, 2007, beginning at 3 p.m.

ADDRESSES: The meeting will be held at the Ft. Mason Officers' Club, Building 1, Upper Fort Mason, San Francisco, CA. Written comments may be sent to: Superintendent, GGNRA, Ft. Mason, Bldg. 201, San Francisco, CA 94123, Attn: Negotiated Rulemaking.

FOR FURTHER INFORMATION CONTACT: Project information line at 415–561–4728, or go to the Web site at *www.parkplanning.nps.gov/goga* and select *Negotiated Rulemaking for Dog Management at GGNRA.*

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570) to consider developing a special regulation for dog walking at GGNRA. Although the Committee may modify its agenda during the course of its work, the proposed agenda for this meeting is as follows: Introductions, approval of the meeting summary for the previous meeting, updates since the previous meeting, update on the concurrent NEPA process, report from the Technical Subcommittee on progress to date, next steps, public comment.

The Committee meeting is open to the public and opportunity will be provided for public comment during the meeting. To request a sign language interpreter, lease call the park TDD line (415) 556–2766, at lease a week in advance of the meeting. Please note that federal regulations prohibit pets in public buildings, with the exception of service animals.

Dated: March 2, 2007.

Bernard C. Fagan,

Acting Chief, Office of Policy.

[FR Doc. 07–1371 Filed 3–20–07; 8:45 am]

BILLING CODE 4312–FN–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD40

Special Regulations; Areas of the National Park System, National Capital Region

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to add a regulation governing parking violations. The addition is needed to address situations in which the vehicle's operator is absent when the vehicle is illegally parked. The proposed amendment provides that a parking citation is subject to fine, allows the citation to name the registered owner if the operator is not present, and creates a rebuttable prima facie presumption that the registered owner of the illegally parked vehicle was the person who committed the violation. This proposed rule is similar to provisions in the parking laws of the District of Columbia, Virginia, and Maryland.

DATES: Comments must be received by May 21, 2007.

ADDRESSES: You may submit comments, identified by the number RIN 1024–AD40, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments.

—E-mail Sean Doyle, Park Ranger, National Park Service at *Sean_Doyle@nps.gov*. Use RIN 1024–AD40 in the subject line.

—Mail or hand delivery to Sean Doyle, Park Ranger, National Park Service National Capital Region, 1100 Ohio Drive SW., Room 236, Washington, DC 20242.

—Fax to: (202) 260–9582.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, Special Assistant, 1849 C St., NW., Room 3319, Washington, DC 20240, *jennifer_lee@nps.gov*, 202–219–1689.

SUPPLEMENTARY INFORMATION:

Background

Parking violations on Federal parkland administered by the NPS in the National Capital Region are regulated by 36 CFR 4.12 (traffic control devices). This section provides that ''Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the superintendent.'' Prohibitions included within 36 CFR 4.12 are violations of handicapped parking signs, no parking, parking times limitations, and parking outside of marked parking spaces. This regulation is routinely used by United States Park Police officers and National Park Service law enforcement commissioned rangers. When a citation is issued and the operator is not identified on the notice, it results in the violation being dismissed if the registered owner fails to appear at trial and the court declines to proceed.

Parking spaces on parkland are limited in number and are intended to provide visitors with safe, convenient, and legal areas to park while they visit the parks. In urbanized areas of parks in the National Capital Region, violation

notices have been dismissed because the operator has not been identified. This is a concern as the U.S. Park Police have documented instances of operators repeatedly parking illegally without consequence, which denies others the ability to legally use the parking places.

Description of Proposed Rulemaking

In response to this problem, the National Park Service proposes to amend the National Capital Region special regulations to establish an enforcement process for parking violation notices issued under 36 CFR 4.12. The proposed rule:

1. Provides that a parking violation notice is subject only to a fine;

2. Provides that the violation notice will name the registered owner if the operator is not present; and

3. Creates a prima facie presumption that the registered owner of the illegally parked vehicle was the person who committed the violation.

The prima facie presumption, however, remains rebuttable if the owner comes forward with evidence that someone else was operating the vehicle. This proposed rule is similar to provisions that already exist in the parking laws of many jurisdictions, including the District of Columbia, Virginia, and Maryland (D.C. Code Ann. § 50–2303.03(c) (2004); Va. Code Ann. § 46.2–1220 (2004); Md. Trans. Code Ann. § 26–302(b)(2002)).

Prima facie presumption is a reasonable and standard provision found in parking codes of many jurisdictions. The connection between the registered owner of an automobile and its operation is a natural one. Indeed, courts have noted, not only the practical impossibility of a police agency to keep a watch over all parked vehicles to ascertain who in fact operates them, but that a traffic regulation's prima facie presumption of responsibility on the registered owner is reasonable, and places neither too great an inconvenience nor an unreasonable hardship if the owner desires to make an explanation. This presumption has been generally upheld by the courts if, as the Park Service proposes here, it also allows the owner to come forward with evidence that someone else was operating the vehicle in order to rebut the inference that the registered owner was responsible. Such parking regulation presumptions have also been upheld as consistent with due process.

The National Park Service proposes to amend 36 CFR 7.96 by adding a new paragraph (f)(5), that provides that a violation of a traffic control device regulating parking under 36 CFR 4.12 is punishable by a fine. Proof that the described vehicle was parked in violation, together with proof that the defendant was at the time the registered owner of the vehicle, shall constitute a prima facie presumption that the registered owner of the vehicle was the person who committed the violation. This presumption allows the owner to come forward with evidence that someone else was operating the vehicle in order to rebut the presumption that the registered owner was responsible.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget makes the final determination as to the significance of this regulatory action and it has determined that this document is not a significant rule and is not subject to review by the Office of Management and Budget.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will only affect those drivers who park illegally in areas administered by the National Park Service in the National Capital Region, and are issued a citation as a result. Based upon the number of parking violation citations currently being issued, and the nominal fine associated with a citation, there will not be an annual economic effect of $100 million or more. This rule will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government since the rule will have no impact at all for those drivers parking legally in these areas.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule will result in establishing consistency with other agencies' actions, since it is similar to provisions already existing in the parking laws of many jurisdictions, including District of Columbia, Virginia, and Maryland law.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule has no effect on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. The rule provides that a parking citation is subject only to a fine, that the citation will name the registered owner if the operator is not present, as well as create a prima facie presumption that the registered owner of the illegally parked vehicle was the person who committed the violation. The prima facie presumption, however, remains rebuttable if the owner comes forward with evidence that someone else was operating the vehicle. Since the prima facie presumption is both a reasonable and standard provision found in the parking codes of many jurisdictions, this rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The primary purpose of this rule is to establish consistency between the parking laws already existing in the local jurisdictions, and the parking laws in adjoining parklands administered by the National Park Service in the National Capital Region. There will not be a significant economic effect on a substantial number of small entities, since the rule will only affect those drivers who park illegally in areas administered by the National Park Service in the National Capital Region, and are issued a citation as a result. All parties have the ability to completely avoid any economic effect simply by parking legally in these areas.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Does not have an annual effect on the economy of $100 million or more. This rule will only affect those drivers who park illegally in areas administered by the National Park Service in the National Capital Region, and are issued a violation notice as a result. Based upon the number of parking violation notices currently being issued, and the nominal fine associated with a violation, there will not be an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. No costs will be incurred by any parties unless a parking violation is issued for parking illegally in areas administered by the National Park Service in the National Capital Region. All parties have the ability to

completely avoid any increase in cost simply by parking legally in these areas.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary purpose of this rule is to establish consistency between the parking laws already existing in the local jurisdictions, and the parking laws in adjoining parklands administered by the National Park Service in the National Capital Region. This rule will not change the ability of United States based enterprises to compete in any way.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule does not impose any unfunded mandate on industry, state, local or tribal governments, or the private sector. This rule applies only to Federal parkland administered by the National Park Service in the National Capital Region, and no costs will be incurred by any parties unless a parking violation notice is issued for parking illegally in these areas. This rule will establish consistency between the parking laws already existing in the local jurisdictions, and the parking laws in adjoining lands administered by the National Park Service in the National Capital Region. As a result, there will not be any ''significant or unique'' affect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Since this rule does not apply to private property, or cause a compensable taking, there are no takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions of this rule apply to land under the jurisdiction of the United States. This rule does not relate to the structure and role of the States, nor will it have direct, substantial, and significant effects on States. This rule imposes no requirements on any governmental entity other than the National Park Service.

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

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

National Environmental Policy Act

We have analyzed the proposed rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. It does not constitute a major Federal action significantly affecting the quality of the human environment, and can be Categorically Excluded under NPS exclusion 3.4 A (8) ''Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or cause physical damage to it.

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it.

(c) Conflict with adjacent ownerships or land uses.

(d) Cause a nuisance to adjacent owners or occupants.''

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) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. As this rule only applies to parkland administered by the National Park Service in the National Capital Region, there will not be any effect on Federally recognized Indian tribes.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more, but shorter sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Drafting Information: The primary authors of this regulation were Sean Doyle, Park Ranger, National Park Service, National Capital Region, and Jerry Case and Jennifer Lee, Regulations Program, WASO.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand deliver comments to Sean Doyle, National Park Service, National Capital Region, 1100 Ohio Drive SW, Room 236, Washington, DC 20242, or fax to (202) 260–9582. Comments may also be submitted on the Federal rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments, and identify comments by RIN 1024–AD40. You may also submit comments by e-mail to *Sean_Doyle@nps.gov.* Use RIN 1024–AD40 in the subject line.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

Parking violation notice, prima facie presumption, traffic control device.

For reasons stated in the preamble, the National Park Service proposes to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Add new paragraph (f)(5) to § 7.96 to read as follows:

§ 7.96 National Capital Region.

* * * * *

(f) * * *

(5) *Parking.* Violation of a traffic control device regulating parking is punishable by fine. In any violation of a traffic control device regulating parking, proof that the described vehicle was parked in violation, together with proof that the defendant was at the time the registered owner of the vehicle, shall constitute a prima facie presumption that the registered owner of the vehicle was the person who committed the violation.

* * * * *

Dated: February 9, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–5112 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2006–0920, FRL–8290–1]

Approval and Promulgation of Implementation Plans; New Jersey; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a New Jersey state implementation plan revision that adopts California's second generation low emission vehicle program for light-duty vehicles, LEV II. Clean Air Act section 177 sets forth requirements by which other states may adopt new motor vehicle emissions standards that are identical to California's standards. Specifically, the State's implementation plan revision adopts changes to its existing light duty vehicle rule by incorporating California's LEV II program. The intended effect of this action is to approve, as consistent with section 110(a)(2) of the Clean Air Act, a control strategy that will help New Jersey achieve attainment of the National Ambient Air Quality Standard for ozone.

DATES: Comments must be received on or before April 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2006–0920, by one of the following methods: *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

E-mail: Werner.Raymond@epa.gov.

Fax: 212–637–3901.

Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Hand Delivery: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2006–0920. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Matthew Laurita, *laurita.matthew@epa.gov* at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, telephone number (212) 637–3895, fax number (212) 637–3901.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Public Access Center, 401 East State Street 1st Floor, Trenton, New Jersey 08625.

SUPPLEMENTARY INFORMATION:

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B. What are the relevant EPA and CAA requirements?
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D. What is the history and current content of the New Jersey LEV Program?
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I. Description of the SIP Revision

A. Background

Under the Clean Air Act (CAA) Amendments of 1990, all 21 counties in New Jersey were designated as nonattainment with respect to the former 1-hour ozone National Ambient Air Quality Standard (NAAQS). The counties were divided into four separate nonattainment areas with ozone attainment deadlines varying by area; however, no counties in New Jersey were redesignated to attainment prior to the revocation of the 1-hour ozone standard on June 15, 2005. On June 15, 2004 all 21 counties in New Jersey were designated as nonattainment with respect to the 8-hour ozone NAAQS as part of either the New York-Northern New Jersey-Long Island, NY–NJ–CT or the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE moderate nonattainment areas. Both of these areas have attainment dates of no later than June 2010.

To bring the state into attainment New Jersey adopted, among other measures, the National Low Emission

Vehicle (NLEV) program on February 3, 1999. The NLEV program was a voluntary agreement between EPA, vehicle manufacturers, and the states to introduce vehicles that met emission standards that were more stringent than the Federal Tier 1 standards in effect at the time. The NLEV program would only take effect after all auto manufacturers and a sufficient number of states ''opted-in'' to the program. EPA made an NLEV in-effect finding on March 2, 1998 (63 FR 11374), after which participating states submitted state implementation plan (SIP) revisions to ensure continuation of the program. New Jersey submitted an NLEV SIP revision on February 22, 1999, and EPA issued a direct final rule to approve New Jersey's NLEV program on November 3, 1999 (64 FR 59638).

In January 2004 the New Jersey Legislature passed legislation requiring the New Jersey Department of Environmental Protection to adopt the California low emission vehicle (LEV) program, known as the LEV II program. Pursuant to this legislation, New Jersey promulgated regulations to adopt a LEV program identical to California's LEV II program. New Jersey's regulations became effective on January 27, 2006. On June 2, 2006, New Jersey submitted a SIP revision to EPA, seeking federal approval of the regulations. New Jersey's LEV program will affect light-duty motor vehicles manufactured in model year 2009 and later.

B. What are the relevant EPA and CAA requirements?

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA may grant a waiver of the section 209(a) prohibition to the State of California, thereby allowing California to adopt its own motor vehicle emissions standards. Section 209(b) of the CAA requires California to show that its standards will be ''* * * in the aggregate, at least as protective of public health and welfare as applicable Federal standards * * *.'' Section 209(b) further provides that EPA will grant a waiver unless it finds that: (1) The State's determination is ''arbitrary and capricious,'' (2) the State ''does not need such State standards to meet compelling and extraordinary conditions,'' or (3) the State's standards and accompanying enforcement procedures are ''not consistent'' with CAA section 202(a).

Section 177 of the CAA allows other states to adopt and enforce California's standards relating to the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition to the identicality requirement, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. New Jersey has met the requirements of section 177.

C. What is the California LEV II program?

The California Air Resources Board (CARB) adopted the first generation LEV regulations in 1990, which were effective through the 2003 model year. CARB adopted California's second generation LEV regulations (LEV II) following a November 1998 hearing. Subsequent to the adoption of the LEV II program in February 2000, the U.S. EPA adopted separate Federal standards known as the Tier 2 regulations (65 FR 6698). In December 2000, CARB modified the LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. EPA granted California a waiver for its LEV II program on April 22, 2003 (68 FR 19811).

The LEV II regulations expand the scope of the LEV I regulations by setting strict fleet-average emission standards for light-duty, medium-duty (including sport utility vehicles) and heavy-duty vehicles. The standards began with the 2004 model year and increase in stringency through the 2010 model year and beyond. The LEV II regulations provide flexibility to auto manufacturers by allowing them to certify their vehicle models to one of several different emissions standards. The different tiers of increasingly stringent LEV II emission standards to which a manufacturer may certify a vehicle are: Low-emission vehicle (LEV), ultra-low-emission vehicle (ULEV), super-ultra low-emission vehicle (SULEV), partial zero-emission vehicle (PZEV), advanced technology partial zero-emission vehicle (ATPZEV) and zero-emission vehicle (ZEV).

The manufacturer must show that the overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits are progressively lower with each model year. The program also requires auto manufacturers to include a ''smog index'' label on each vehicle sold, which is intended to inform consumers about the amount of pollution coming from that vehicle relative to other vehicles.

In addition to the LEV II requirements, minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer must be ZEVs. This is referred to as the ZEV mandate. California has modified the ZEV mandate several times since it took effect. Most recently, CARB has put in place an alternative compliance program (ACP) to provide auto manufacturers with several options to meet the ZEV mandate. The ACP established ZEV credit multipliers to allow auto manufacturers to take credit for meeting the ZEV mandate by selling more PZEVs and ATPZEVs than they are otherwise required to sell. On December 28, 2006, EPA granted California's request for a waiver of federal preemption to enforce provisions of the ZEV regulations through model year 2011.

On October 15, 2005, California amended the LEV II program to include greenhouse gas (GHG) emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles. On December 21, 2005, California requested that EPA grant a waiver of preemption under CAA section 209(b) for its greenhouse gas emission regulations. As of the date of this Notice, EPA has not taken action on California's request.

D. What is the history and current content of the New Jersey LEV Program?

On February 3, 1999, New Jersey adopted the NLEV program. The NLEV program was a voluntary agreement between EPA, vehicle manufacturers, and the states to introduce vehicles that met emission standards that were more stringent than the Federal Tier 1 standards in effect at the time. The NLEV program would only take effect after all auto manufacturers and a sufficient number of states ''opted-in'' to the program. EPA made an NLEV in-effect finding on March 2, 1998 (63 FR 11374), after which participating states submitted state implementation plan (SIP) revisions to ensure continuation of the program. New Jersey submitted an NLEV SIP revision on February 22, 1999, and EPA issued a direct final rule to approve New Jersey's NLEV program on November 3, 1999 (64 FR 59638).

On January 27, 2006, New Jersey amended its low emission vehicle program to be identical to California's LEV II program. New Jersey has adopted California's LEV II program, which

includes provisions for light-duty, medium-duty and heavy-duty vehicles, by incorporating the California LEV II regulations into the New Jersey Administrative Code by reference.

New Jersey is requesting that EPA approve its LEV program regulations as submitted in its SIP submission. EPA's approval would make the program federally enforceable, further ensuring that planned emissions reductions will continue to take place.

II. Proposed EPA Action

EPA is proposing to approve the portion of New Jersey's low emission vehicle program that is identical to the California standards for which a waiver has been granted. However, because the waiver granted for the ZEV portion of the program is limited to model year 2011 and earlier vehicles, EPA is proposing to take no action on the ZEV component. In addition, EPA is proposing to take no action on the greenhouse gas component of the program.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 8, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7–5157 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–951; MB Docket No. 07–39, RM–11360]

Radio Broadcasting Services; Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Terry A. Cowan (''Petitioner'') proposing the allotment of Channel 226C3 at Prineville, Oregon. The proposed coordinates are 44–26–17 NL and 120–57–12 WL with a site restriction of 11.4 km (7.1 miles) north of city reference.

DATES: Comments must be filed on or before April 23, 2007, and reply comments on or before May 8, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner's counsel, as follows: William D. Silva, Esquire, Law Offices of William D. Silva, 5335 Wisconsin Avenue, NW., Suite 400, Washington, DC 20015–2003.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 07–39, adopted February 28, 2007, and released March 2, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to

this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 226C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–5073 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–311; FCC 06–180]

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on its proposal to apply the findings in Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05–311, FCC 06–180, *Report & Order*, (''*Order*'') to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs. The Commission also seeks comment on the tentative conclusion that it cannot preempt State or local customer service laws that exceed the Commission's standards, nor can it prevent LFAs and cable operators from agreeing to more stringent standards.

DATES: Comments for this proceeding are due on or before April 20, 2007; reply comments are due on or before May 7, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 05–311, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* or Brendan Murray, *Brendan.Murray@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking (FNPRM)*, FCC 06–180, adopted on December 20, 2006, and released on March 5, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

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

In this present document, we have assessed the effects of the application filing requirements used to calculate the time frame in which a local franchising authority shall make a decision, and find that those requirements will benefit companies with fewer than 25 employees by providing such companies with specific application requirements of a reasonable length. We anticipate this specificity will streamline this process for companies with fewer than 25 employees, and that these requirements will not burden those companies.

Summary of the Notice of Proposed Rulemaking

1. As discussed above, this proceeding is limited to competitive applicants under Section 621(a)(1). Yet, some of the decisions in this *Order* also appear germane to existing franchisees. We asked in the *Local Franchising NPRM* whether current procedures and requirements were appropriate for any cable operator, including existing operators. NCTA argues that if the Commission establishes franchising relief for new entrants, we should do the same for incumbent cable operators because imposing similar franchising requirements on new entrants and incumbent cable operators promotes competition. Somewhat analogously, the BSPA argues that any new franchise regulatory relief should extend to all current competitive operators and new entrants equally; otherwise, the inequities would effectively penalize existing competitive franchisees simply because they were the first to risk competition with the incumbent cable operator. The record does not indicate any opposition by new entrants to the idea that any relief afforded them also be afforded to incumbent cable operators. Some incumbent cable operators discussed the potential impact of Commission action under Section 621 on incumbent cable operators. For example, Charter argues that granting

competitive cable providers entry free from local franchise requirements would affect Charter's ability to satisfy its existing obligations; funds that Charter might use to respond to competition by investing in new facilities and services would instead be tied up in franchise obligations not imposed on Charter's competitors, which would undermine the company's investment and render its franchise obligations commercially impracticable. AT&T argues that competition will not harm incumbent cable operators: Cable has handled the competition that DBS presents, and analysts predict that the new wave of competition will not put them out of business.

2. We tentatively conclude that the findings in this *Order* should apply to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs. We note that Section 611(a) states ''A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use'' and Section 622(a) provides ''any cable operator may be required under the terms of any franchise to pay a franchise fee.'' These statutory provisions do not distinguish between incumbents and new entrants or franchises issued to incumbents versus franchises issued to new entrants. We seek comment on our tentative conclusion. We also seek comment on our authority to implement this finding. We also seek comment on what effect, if any, the findings in this *Order* have on most favored nation clauses that may be included in existing franchises. The Commission will conclude this rulemaking and release an order no later than six months after release of this *Order*.

3. In the *Local Franchising NPRM*, we also sought comment on whether customer service requirements should vary greatly from jurisdiction to jurisdiction. In response, AT&T urges us to adopt rules to prevent LFAs from imposing various data collection and related requirements in exchange for a franchise. AT&T claims that LFAs have imposed obligations that franchisees collect, track, and report customer service performance data for individual franchise areas. AT&T states that it operates its call centers and systems on a region-wide basis, and that it is not currently possible or economically feasible for AT&T to comply with the various local customer service requirements on a franchise by franchise basis. AT&T also asks us to affirm that LFAs may not, absent the franchise applicant's consent, impose any local service quality standards that go beyond the requirements of duly enacted laws and ordinances. Verizon indicates that some localities have conditioned the grant of a franchise upon the submission of Verizon's data services to local customer service regulation.

4. NATOA opposes AT&T's request for relief from local customer service standards, and argues that the Act and the Commission's rules explicitly provide for local customer service regulation. Specifically, NATOA asserts that Section 632(d)(2) of the Cable Act allows for the establishment and enforcement of local customer service laws that go beyond the federal standards. Other parties assert that customer service regulation is necessary to ensure that consumers have regulatory relief.

5. Section 632(d)(2) states that:

> 22. [n]othing in this Section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission * * * Nothing in this Title shall be construed to prevent the establishment and enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.
>
> 23. Given this explicit statutory language, we tentatively conclude that we cannot preempt state or local customer service laws that exceed the Commission's standards, nor can we prevent LFAs and cable operators from agreeing to more stringent standards. We seek comment on this tentative conclusion.

I. Procedural Matters

6. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before 30 days after this *Further NPRM of Proposed Rulemaking* is published in the **Federal Register**, and reply comments on or before 45 days of publication. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large

print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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

9. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Further NPRM of Proposed Rulemaking.* The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Second Further NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

10. *Additional Information.* For additional information on this proceeding, please contact Holly Saurer, Media Bureau at (202) 418–2120, or Brendan Murray, Policy Division, Media Bureau at (202) 418–2120.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in the Further NPRM of Proposed Rulemaking (''Further NPRM'') on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further NPRM provided in paragraph 145 of the item. The Commission will send a copy of the Further NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the Further NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

12. The Further NPRM continues a process to implement Section 621(a)(1) of the Communications Act of 1934, as amended, in order to further the interrelated goals of enhanced cable competition and accelerated broadband deployment as discussed in the Report and Order (''Order''). Specifically, the Further NPRM solicits comment on whether the Commission should apply the rules and guidelines adopted in the Order to cable operators that have existing franchise agreements, and if so, whether the Commission has authority to do so. The Further NPRM also seeks comment on whether the Commission can preempt state or local customer service laws that exceed Commission standards.

Legal Basis

13. The Further NPRM tentatively concludes that the Commission has authority to apply the findings in the Order to cable operators with existing franchise agreements. In that regard, the Further NPRM finds that neither Section 611(a) nor Section 622(a) distinguishes between incumbents and new entrants or franchises issued to incumbents and franchises issued to new entrants.

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

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

15. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

16. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

17. The Commission has determined that the group of small entities possibly directly affected by the proposed rules herein, if adopted, consists of small governmental entities. A description of these entities is provided below. In addition the Commission voluntarily provides descriptions of a number of entities that may be merely indirectly affected by any rules that result from the Further NPRM.

Small Governmental Jurisdictions

18. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Miscellaneous Entities

19. The entities described in this section are affected merely indirectly by our current action, and therefore are not formally a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our tentative conclusions.

Cable Operators

20. The ''Cable and Other Program Distribution'' census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $13.0 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

21. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small-business-size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The

most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

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

23. *Open Video Services.* Open Video Service (''OVS'') systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.0 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

24. We anticipate that any rules that result from this action would have at most a de minimis impact on small governmental jurisdictions (*e.g.*, one-time proceedings to amend existing procedures regarding the method of granting competitive franchises). Local franchising authorities (''LFAs'') today must review and decide upon competitive cable franchise applications, and will continue to perform that role upon the conclusion of this proceeding; any rules that might be adopted pursuant to this NPRM likely would require at most only modifications to that process.

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

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

26. As discussed in the Further NPRM, Sections 611(a) and 622(a) do not distinguish between new entrants and cable operators with existing franchises. As discussed in the Order, the Commission has the authority to implement the mandate of Section 621(a)(1) to ensure that LFAs do not unreasonably refuse to award competitive franchises to new entrants, and adopts rules designed to ensure that the local franchising process does not create unreasonable barriers to competitive entry for new entrants. Such rules consist of specific guidelines (*e.g.*, maximum timeframes for considering a competitive franchise application) and general principles regarding franchise fees designed to provide LFAs with the guidance necessary to conform their behavior to the directive of Section 621(a)(1). As noted above, applying these rules regarding the franchising process to cable operators with existing franchises likely would have at most a de minimis impact on small governmental jurisdictions. Even if that were not the case, however, we believe that the interest of fairness to those cable operators would outweigh any impact on small entities. The alternative (*i.e.*, continuing to allow LFAs to follow procedures that are unreasonable) would be unacceptable, as it would be inconsistent with the Communications Act. We seek comment on the impact that such rules might have on small entities, and on what effect alternative rules would have on those entities. We also invite comment on ways in which the Commission might implement the tentative conclusions while at the same time imposing lesser burdens on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

27. None.

Report to Congress

28. The Commission will send a copy of the FNPRM, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FNPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

II. Ordering Clauses

29. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303r, 403 and 405 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 303(r), 403, this *Further Notice of Proposed Rulemaking is adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–5118 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, and 52

[FAR Case 2006–029; Docket No. 2007–0001; Sequence 5]

RIN 9000–AK72

Federal Acquisition Regulation; FAR Case 2006–029, Federal Funding Accountability and Transparency Act (FFATA)—Reporting Requirement of Subcontractor Award Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require that contractors report specific subcontract awards to a public database. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282) requires the existence and operation of a searchable website that provides public access to information about Federal expenditures. The FFATA specifically requires that a pilot program be established to test the collection and accession of subcontract award data. As a result, subcontracts awarded and funded with Federal appropriated funds will be disclosed to the public in a single searchable website.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before May 21, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–029 by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button. Please include any personal and/or business information inside the document. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–029 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–029.

SUPPLEMENTARY INFORMATION:

A. Background

The FFATA requires the existence and operation of a searchable website that provides public access to information about Federal expenditures. Section 2(d) of the FFATA requires that a pilot program be established to test the collection and accession of subcontract award data.

In order to implement Section 2(d) of the FFATA, the Councils propose to add a new subpart to FAR Part 4, with an associated clause in FAR Part 52, which addresses reporting subcontract awards. The pilot program will begin no later than July 1, 2007 and will terminate no later than January 1, 2009.

This rule applies to contracts with values equal to or greater than $500,000,000 awarded and performed in the United States, and requires the awardees to report all first tier subcontract awards exceeding $1,000,000 to the FFATA database at *www.federalspending.gov*. The Councils chose these thresholds to ensure that a sufficient number of subcontract award reports will be entered in the database to permit assessment of its effectiveness without imposing a significant burden on contractors during the pilot program. The Government does not guarantee the reliability of the data reported. The Government has no mechanism to verify the data submitted. Before completion of the pilot program, the Councils will initiate a separate rulemaking process to establish the requirements for the final subcontract reporting database pursuant to the statute. The Councils anticipate that the final reporting requirement will apply to contracts with values equal to or greater than the simplified acquisition threshold and will require the reporting of subcontracts with values greater than $25,000, regardless of the award or performance locations of the prime contract or subcontracts. This rule does not apply to classified contracts or commercial item contracts issued under FAR Part 12. FFATA did not explicitly apply its provisions to commercial items, and the statute will be added to the list of laws inapplicable to commercial contracts at 12.503(a), under 41 U.S.C. 430.

The Councils specifically invite comments on the following—

(a) The pilot program—

(1) The burden imposed;

(2) Whether making this information publicly available will affect the contractor's competitiveness; and

(3) Whether availability of this information on a public website raises industrial, national or other security concerns.

(b) Possible final reporting requirements—

(1) Whether the final reporting requirements (after the pilot program) should apply to contracts and subcontracts;

(i) Awarded or performed outside the United States;

(ii) With values greater than $25,000; and

(iii) Awards below the first tier.

(2) Whether the reporting period should be 30 days after award of a subcontract as expressed in the statute or a longer period; and

(3) Whether the unique subcontractor identifier should be the DUNS number, the Taxpayer Identification Number (TIN) some other number, or a non-numerical unique identifier.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the contract dollar threshold chosen for application of the pilot program ($500,000,000) ensures that any small businesses receiving such large prime contract awards are estimated to be minuscule to none. An Initial Regulatory Flexibility Analysis has,

therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 12, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat will submit a request for approval of a new information collection requirement concerning OMB Control Number 9000–00XX, FFATA—Reporting Requirement of Subcontractor Award Data to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 143
Responses per respondent: 28
Total annual responses: 4,004
Preparation hours per response: 1
Total response burden hours: 4,004.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than May 21, 2007 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FFATA—Reporting Requirement of Subcontractor Award Data, in all correspondence.

List of Subjects in 48 CFR Parts 4, 12, and 52

Government procurement.

Dated: March 13, 2007.

Al Matera

Acting Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 12, and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Add Subpart 4.14 to read as follows:

Subpart 4.14—Reporting Subcontract Awards

4.1400 Scope of subpart.

This subpart implements Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) by establishing a pilot program for a single searchable website, available to the public at no charge, that includes information on Federal subcontracts. This pilot program will expire not later than January 1, 2009.

4.1401 Contract clause.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.204–10, Reporting Subcontract Awards, in all solicitations and contracts with values of $500,000,000 or more when the contract will be awarded and performed in the United States.

(b) The clause is not required in—

(1) Solicitations and contracts for commercial items issued under FAR Part 12; or

(2) Classified solicitations and contracts.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.503 by adding paragraph (a)(7) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial services.

(a) * * *

(7) 31 U.S.C. 6101 Note, P. L. 109–282 Federal Funding Accountability and Transparency Act of 2006, requirement to report subcontract data.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 52.204–10 to read as follows:

52.204–10 Reporting Subcontract Awards.

As prescribed in 4.1401(a), insert the following clause:

REPORTING SUBCONTRACT AWARDS (DATE)

(a) *Definition.* *Subcontract*, as used in this clause, means any contract as defined in FAR Subpart 2.1 entered into by the Contractor to furnish supplies or services for performance of this contract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders, but does not include contracts that provide supplies or services benefiting two or more contracts.

(b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109–282) requires establishment of a pilot program for a single searchable website, available to the public at no charge, that includes information on Federal subcontracts.

(c) Within thirty days after the end of March, June, September, and December of each year through 2008, the Contractor shall report the following information at *www.federalspending.gov* for each subcontract award with a value greater than $1,000,000 made during that quarter. The Contractor shall follow the instructions at *www.federalspending.gov*to report the data:

(1) Name of the subcontractor.

(2) Amount of the award.

(3) Date of award.

(4) The applicable North American Industry Classification System code.

(5) Funding agency or agencies.

(6) Award title descriptive of the purpose of the action.

(7) Contract number.

(8) Subcontractor location including address.

(9) Subcontract primary performance location including address.

(10) Unique identifier for the subcontractor.

(End of clause)

[FR Doc. 07–1318 Filed 3–20–07; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register
Vol. 72, No. 54
Wednesday, March 21, 2007

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0179]

Notice of Request for Extension of Approval of an Information Collection; Interstate Movement of Swine Within a Production System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the interstate movement of swine within a production system.

DATES: We will consider all comments that we receive on or before May 21, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0179 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0179, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0179.

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: For information regarding an information collection associated with regulations for the interstate movement of swine within a production system, contact Dr. John Korslund, Senior Staff Veterinarian, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 46, Riverdale, MD 20737–1231; (301) 734–5914. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Interstate Movement of Swine Within a Production System.

OMB Number: 0579–0161.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to prevent the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS prohibits or restricts the interstate movement of livestock that have, or have been exposed to, certain diseases.

APHIS regulations in title 9 of the Code of Federal Regulations, chapter I, subchapter C, govern the interstate movement of animals and other articles to prevent the spread of pests and diseases of livestock within the United States.

The regulations in part 71 of subchapter C contain requirements for moving swine interstate within a swine production system. A production system consists of separate farms that each specialize in a different phase of swine production-sow herds, nursery herds, and finishing herds. These separate farms, all members of the same production system, may be located in more than one State. Our regulations facilitate the interstate movement of swine within a single production system while continuing to provide protection against the interstate spread of swine diseases. Moving swine interstate within a swine production system involves the use of two information collection activities: A swine production health plan and an interstate swine movement report.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.081967 hours per response.

Respondents: Swine producers operating within swine production systems.

Estimated annual number of respondents: 1,200.

Estimated annual number of responses per respondent: 10.166.

Estimated annual number of responses: 12,200.

Estimated total annual burden on respondents: 1,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 15th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5108 Filed 3–20–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0037]

Wildlife Services; Publication of NEPA Legal Notices

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will normally be used by the Wildlife Services program of the Animal and Plant Health Inspection Service to publish legal notices in accordance with the Agency's National Environmental Policy Act (NEPA) implementing procedures, including notices announcing the availability, for public comment, of documents regarding environmental assessments, environmental impact statements, and subsequent final decisions. We are also providing the address of an Internet Web site address where those notices will also be posted. We are publishing this notice to inform interested members of the public which newspapers Wildlife Services will most likely use to publish legal notices in connection with its NEPA-related activities, which we believe will enhance the public's opportunity to read and comment on our NEPA documents and decisions by providing clear, timely, and consistent notice of their availability.

DATES: Publication of legal notices in the listed newspapers and the posting of those notices on the Internet will begin with the first such notice made after the date of publication of this notice. The Web address and list of newspapers will remain in effect until another notice is published in the **Federal Register**

FOR FURTHER INFORMATION CONTACT: Mr. David S. Reinhold, National Environmental Manager, Operational Support Staff, WS, APHIS, 4700 River Road, Unit 87, Riverdale, MD 20737–1235; (301) 734–7921.

SUPPLEMENTARY INFORMATION: This notice lists the newspapers that will normally be used by the Wildlife Services (WS) program of the Animal and Plant Health Inspection Service (APHIS) to publish legal notices in accordance with the Agency's National Environmental Policy Act (NEPA) implementing procedures in 7 CFR part 372. We are publishing this notice to inform interested members of the public which newspapers APHIS–WS will most likely use to publish legal notices in connection with its NEPA-related activities, which we believe will enhance the public's opportunity to read and comment on our NEPA documents and decisions by providing clear, timely, and consistent notice of their availability. Newspaper notices will be published in the State newspaper of record specific to the State in which the APHIS–WS NEPA-related activities will take place. Additional newspapers, or different newspapers, may occasionally have to be used, depending upon the geographic area or areas covered or affected by a particular APHIS–WS NEPA document, as well as on the subject matter and courses of proposed action or actions identified in the NEPA document.

In addition to the notice provided through publication in newspapers, APHIS–WS will also post its NEPA-related legal notices on the Internet. The following Web address will be used: *http://www.aphis.usda.gov/wildlife_damage/nepa.shtml*.

The newspapers we expect to routinely use are listed below by State:

Alabama, Montgomery; Montgomery County: *Montgomery Advertiser,* published daily.
Arizona, Phoenix; Maricopa County: *The Arizona Republic,* published daily.
Arkansas, Little Rock; Pulaski County: *Arkansas Democrat Gazette,* published daily.
California, Sacramento; Sacramento County: *Sacramento Bee*, published daily.
Colorado, Denver; Denver County: *Denver Post/Rocky Mountain News,* published daily.
Connecticut, Hartford; Hartford County: *Hartford Courant,* published daily.
Delaware, Dover; Kent County: *Delaware State News,* published daily.
Florida, Tallahassee; Leon County: *Tallahassee Democrat,* published daily.
Georgia, Atlanta; Fulton County: *Atlanta Journal and Constitution,* published daily.
Guam, Hagatna: *Pacific Daily News,* published daily.
Hawaii, Honolulu; Oahu County: *Honolulu Advertiser,* published daily.
Idaho, Boise; Ada County: *The Idaho Statesman,* published daily.
Illinois, Springfield; Sangamon County: *State Journal-Register,* published daily.
Indiana, Indianapolis; Marion County: *Indianapolis Star,* published daily.
Iowa, Des Moines; Polk County: *Des Moines Register,* published daily.
Kansas, Topeka; Shawnee County: *Topeka Capital Star,* published daily.
Kentucky, Frankfort; Franklin County: *The State Journal,* published daily.
Louisiana, Baton Rouge; East Baton Rouge Parish: *The Advocate,* published daily.
Maine, Augusta; Kennebec County: *Kennebec Journal,* published daily.
Maryland, Annapolis; Anne Arundel County: *Capitol-Gazette,* published daily.
Massachusetts, Boston; Suffolk County: *Boston Herald,* published daily.
Michigan, Lansing; Ingham County: *Lansing State Journal,* published daily.
Minnesota, Minneapolis/St. Paul; Hennepin County: *Star Tribune,* published daily.
Mississippi, Jackson; Hinds County: *Clarion Ledger,* published daily.
Missouri, Jefferson City; Cole County: *Jefferson City News Tribune,* published daily.
Montana, Helena; Lewis and Clark County: *Helena Independent Record,* published daily.
Nebraska, Lincoln; Lancaster County: *Lincoln Journal Star,* published daily.
Nevada, Carson City; Carson County: *Nevada Appeal,* published daily.
New Hampshire, Concord; Merrimack County: *Concord Monitor,* published daily.
New Jersey, Trenton; Mercer County: *The Times of Trenton,* published daily.
New Mexico, Santa Fe; Santa Fe County: *The Santa Fe New Mexican,* published daily.
New York, Albany; Albany County: *The Times Union,* published daily.
North Carolina, Raleigh; Wake County: *The News and Observer,* published daily.
North Dakota, Bismarck; Burleigh County: *Bismarck Tribune,* published daily.
Ohio, Columbus; Franklin County: *Columbus Dispatch,* published daily.
Oklahoma, Oklahoma City; Oklahoma County: *The Daily Oklahoman,* published daily.
Oregon, Salem; Marion County: *Statesman Journal,* published daily.
Pennsylvania, Harrisburg; Dauphin County: *The Patriot News,* published daily.
Puerto Rico, San Juan; San Juan Municipality: *San Juan Star,* published daily.
Rhode Island, Providence; Providence County: *Providence Journal,* published daily.
South Carolina, Columbia; Richland County: *The State Newspaper,* published daily.
South Dakota, Pierre; Hughes County: *Capital Journal,* published weekdays.
Tennessee, Nashville; Davidson County: *The Tennessean,* published daily.
Texas, Austin; Travis County: *The Austin Statesman,* published daily.
Utah, Salt Lake City; Salt Lake County: *Salt Lake Tribune,* published daily.
Vermont, Montpelier; Washington County: *Times Argus,* published daily.
Virginia, Richmond; (No County): *Richmond Times Dispatch,* published daily.

Virgin Islands, Charlotte Amalie; St. Thomas: *Virgin Islands Daily News,* published daily.
Washington, Olympia; Thurston County: *The Olympian,* published daily.
Washington, DC: *Washington Times,* published daily.
West Virginia, Charleston; Kanawha County: *Charleston Newspapers,* published daily.
Wisconsin, Madison; Dane County: *Wisconsin State Journal,* published daily.
Wyoming, Cheyenne; Laramie County: *Wyoming Tribune Eagle,* published daily.

Supplemental notices may be placed in any newspaper, but timeframes/deadlines will be calculated based upon the date of publication of notices in the newspapers of record listed above.

Done in Washington, DC, this 15th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5110 Filed 3–20–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR 215, 217, and 218. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. this will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after April 1, 2007. The list of newspapers will remain in effect until October 1, 2007, when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Regional Appeals Coordinator Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 215, 217, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 215, 217 and 218. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

Regional Forester, Intercountain Region

Regional Forester decisions affecting National Forests in Idaho: *Idaho Statesman.*
Regional Forester decisions affecting National Forests in Nevada: *Reno Gazette-Journal.*
Regional Forester decisions affecting National Forests in Wyoming: *Casper Star-Tribune.*
Regional Forester decisions affecting National Forests in Utah: *Salt Lake Tribune.*
Regional Forester decisions affecting National Forests in the Intermountain Region: *Salt Lake Tribune.*

Ashley National Forest

Ashley Forest Supervisor decisions: *Vernal Express.*
District Ranger decisions for Duchesne, Roosevelt: *Uintah Basin Standard.*
Flaming Gorge District Ranger for decisions affecting Wyoming: *Rocket Miner.*
Flaming Gorge and Vernal District Ranger for decisions affecting Utah: *Vernal Express.*

Boise National Forest

Boise Forest Supervisor decisions: *Idaho Statesman.*
Cascade District Ranger decisions: *Long Valley Advocate.*
Emmett District Ranger decisions: *Messenger-Index.*
District Ranger decisions for Idaho City and Mountain Home *Idaho Statesman.*
Lowman District Ranger decisions: *Idaho World.*

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor and District Ranger decisions: *Casper Star-Tribune.*

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal.*
Caribou-Targhee Forest Supervisor decisions for the Targhee portion: *Post Register.*
District Ranger decisions for Ashton, Dubois, Island Park, Palisades and Teton Basin: *Post Register.*
District Ranger decisions for Montpelier, Soda Springs and Westside: *Idaho State Journal.*

Dixie National Forest

Dixie Forest Supervisor decision: *Daily Spectrum.*
District Ranger decisions for Cedar City, Escalante, Pine Valley and Powell: *Daily Spectrum.*
Fremont (formerly Teasdale) District Ranger decisions: *Richfield Reaper.*

Fishlake National Forest

Fishlake Forest Supervisor and District Ranger decisions: *Richfield Reaper.*

Humboldt-Toiyabe National Forest

Humboldt-Toiyabe Forest Supervisor decisions that encompass all or portions of both the Humboldt and Toiyabe National Forests: *Reno Gazette-Journal.*
Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press.*
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal.*
Austin District Ranger decisions: *The Battle Mountain Bugle.*
Bridgeport and Carson District Ranger decisions: *Reno Gazette-Journal.*
Ely District Ranger decisions: *The Ely Times.*
District Ranger decisions for Jarbidge, Mountain City and Ruby Mountains: *Elko Daily Free Press.*
Santa Rosa District Ranger decisions: *Humboldt Sun.*
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal.*
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News.*

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate.*
Ferron District Ranger decisions: *Emery County Progress.*
Moab District Ranger decisions: *Times Independent.*
Monticello District Ranger decisions: *San Juan Record.*
Price District Ranger decisions: *Sun Advocate.*
Sanpete District Ranger decisions: *Sanpete Messenger.*

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman.*
Council District Ranger decisions: *Adams County Record.*
District Ranger decisions for Krassel, McCall and New Meadows: *Star News.*
Weiser District Ranger decisions: *Signal American.*

Salmon-Challis National Forest

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald.*
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger.*
District Ranger decisions for Lost River, Middle Fork and Challis-Yankee Fork: *The Challis Messenger.*
District Ranger decisions for Leadore, North Fork and Salmon-Cobalt: *The Recorder-Herald.*

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News.*

District Ranger decisions for Fairfield and Minidoka: *The Times News.*
Ketchum District Ranger decisions: *Idaho Mountain Express.*
Sawtooth National Recreation Area: *The Challis Messenger.*

Uinta National Forest

Uinta Forest Supervisor and District Ranger decisions: *The Daily Herald.*

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune.*
District Ranger decisions for Evanston and Mountain View: *Uinta County Herald.*
District Ranger decisions for Kamas and Salt Lake: *Salt Lake Tribune.*
Logan District Ranger decisions: *Logan Herald Journal.*
Ogden District Ranger decisions: *Standard Examiner.*

Dated: March 15, 2007.

Jack G. Troyer,

Regional Forester.

[FR Doc. 07–1369 Filed 3–20–07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Performance in the Commercial Stone Crab and Lobster Fisheries in Florida.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 58.

Number of Respondents: 58.

Average Hours per Response: One hour.

Needs and Uses: The objective of the proposed collection is to gather data with which to establish socio-economic baselines in the commercial stone crab and lobster fisheries, assess the financial and economic performance of the industry, and develop economic models to evaluate future management proposals. Data will be collected from stone crab fishermen that land in counties along the west coast of Florida and from lobster/stone crab fishermen that land in the Miami River area. The data collection will occur between May and October 2007 when the stone crab fishery is closed.

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 14, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5093 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

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

Title: Malcolm Baldrige National Quality Award and Examiner Applications.

Form Number(s): None.

OMB Approval Number: 0693–0006.

Type of Review: Regular submission.

Burden Hours: 7,800.

Number of Respondents: 900 (Awards 100; Examiners 800).

Average Hours per Response: Award applications, 74 hrs; and Board of Examiners applications, 30 minutes.

Needs and Uses: Public Law 100–107, the Malcolm Baldrige Quality Improvement Act of 1987 established an annual U.S. National Quality Award. The Secretary of Commerce leads and NIST develops and manages the Award with the cooperation with the private sector. The purposes of the Award are to promote quality awareness, recognize the quality achievements of U.S. companies, and to share successful quality strategies and practices. The law explicitly states that ''An organization may qualify for an award only if it permits a rigorous evaluation of the way in which its business and other operations have contributed to improvements in quality.'' The failure to collect the information required of the Award and Examiner applicants would make it impossible to evaluate the applications and grant the Awards, and violate our statutory responsibilities.

Affected Public: Business or organizations and public and private for-profit and not-for-profit and education institutions may apply for the Award. Individuals with expertise in the business, education, health care, and/or non-profit fields are eligible to apply to be Members of the Board of Examiners.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: March 15, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5095 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review

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

SUMMARY: On September 12, 2006, the U.S. Department of Commerce (the Department) published the preliminary results of the first administrative review of the antidumping duty order on floor–standing, metal–top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China

(PRC). *See Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53655, (September 12, 2006) (Preliminary Results). This review covers three producer/exporters: (1) Since Hardware (Guangzhou) Co., Ltd. (Since Hardware); (2) Forever Holdings Ltd. (Forever Holdings); and (3) Foshan Shunde Yongjian Houseware & Hardware Co., Ltd. (Foshan Shunde). The period of review (POR) is February 3, 2004, through July 31, 2005. We have made changes to certain surrogate values based on our analysis of the record, including factual information obtained since the preliminary results. Therefore, the final results differ from the preliminary results. We are also rescinding this review with respect to Shunde Yongjian Houseware Co., Ltd. (Shunde Yongjian). *See* ''Final Results of Review'' section below.

EFFECTIVE DATE: March 21, 2007.

FOR FURTHER INFORMATION CONTACT: Kristina Horgan or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the preliminary results of the third administrative review on September 12, 2006 in the **Federal Register**. *See Preliminary Results*.

Since the Preliminary Results the following events have occurred:

On August 31, 2006, we issued a supplemental questionnaire to Foshan Shunde to inquire about its relationship with Shunde Yongjian. On September 14, 2006, we received the supplemental questionnaire response from Foshan Shunde, and an addendum to that response on September 15, 2006. On September 20, 2006, we extended the time limit for submitting further information to value the factors of production until October 16, 2006. On October 16, 2006, we received a surrogate value submission from Home Products International Inc. (petitioner).

From November 13 through 16, 2006, the Department conducted a verification of Since Hardware's sales and factors of production information at Since Hardware's facilities in Guangzhou, Guangdong, PRC. *See* Memorandum to the File from James Doyle, Director, Office 9, and Carrie Blozy, Program Manager, Office 9, regarding *Verification of the Sales and Factors Response of Since Hardware (Guangzhou) Co. Ltd. in the First Antidumping Administrative Review of Floor–Standing, Metal–Top Ironing Tables People's Republic of China* (January 22, 2007) (Since Hardware Verification Report).

From January 9 through 12, 2007, the Department conducted a verification of Foshan Shunde's sales and factors of production information at Foshan Shunde's facilities in Foshan, Guangdong, PRC. *See* Memorandum to the File from Kristina Horgan, Senior Case Analyst, Office 9, and Bobby Wong, Case Analyst, Office 9, regarding *Verification of the Sales & Factors Responses of Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. in the Antidumping Duty Review of Floor–Standing Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China* (January 22, 2007) (Foshan Shunde Verification Report).

We invited parties to comment on our *Preliminary Results*. On January 24, 2007, Since Hardware requested a one–day extension of the deadline to submit case briefs, and on January 25, 2007, the Department granted that request. We received case briefs from petitioner, Since Hardware, Forever Holdings, and Foshan Shunde on January 30, 2007. On February 2, 2007, we requested comments on the Department's revised expected non–market economy (NME) wage rate. We received rebuttal briefs from petitioner, Since Hardware, and Forever Holdings on February 5, 2007.[1]

Scope of the Antidumping Duty Order

For purposes of this order, the product covered consists of floor–standing, metal–top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full–height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor–standing, metal–top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready–to-use ensemble consisting of the metal–top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board'' *i.e.*, a metal–top table only, without the pad and cover with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor–standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

Separate Rates

Since Hardware, Forever Holdings, and Foshan Shunde requested separate, company–specific antidumping duty rates. In the *Preliminary Results*, we found that Since Hardware, Forever Holdings, and Foshan Shunde all met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 71 FR at 53656–

[1] Since Hardware commented on the newly posted NME wage rate in its case brief, while Forever Holdings commented on the calculation of the NME wage rate in both its case brief and rebuttal brief.

53658. The Department did not receive comments on this issue prior to these final results. Moreover, we have not received any information since the *Preliminary Results* with respect to Since Hardware, Forever Holdings, and Foshan Shunde that would warrant reconsideration of our separate–rates determinations with respect to these companies. Therefore, we have assigned individual dumping margins to Since Hardware, Forever Holdings, and Foshan Shunde for this review period.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding *Issues and Decision Memorandum for the Final Results in the First Administrative Review of Floor–standing, Metal–top Ironing Tables and Certain Parts Thereof from the People's Republic of China* (March 12, 2007) (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://trade.gov/ia. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to Shunde Yongjian. We stated in the *Preliminary Results* that if we determined not to collapse Foshan Shunde and Shunde Yongjian, and if we found that Foshan Shunde is not the successor in interest to Shunde Yongjian, we would rescind the review with respect to Shunde Yongjian because the company had no entries of subject merchandise during the POR. *See Preliminary Results*, 71 FR at 53656. Based on our analysis of information and comments received from interested parties on this issue, as discussed in depth in the accompanying Issues and Decision Memorandum at Comment 8, the Department has determined that Foshan Shunde and Shunde Yongjian should not be collapsed and that Foshan Shunde is not the successor–in-interest to Shunde Yongjian. Therefore, the Department is rescinding this administrative review with respect to Shunde Yongjian, but will continue to calculate a separate rate for Foshan Shunde. See ''Separate Rates'' section above.

Changes since the Preliminary Results

Based on the comments received from the interested parties and findings at verification, we have made the following company–specific changes to Since Hardware's margin calculation: 1) The Department will add a freight factor to Since Hardware's calculated normal value to account for the freight distance between its factory and leased processing facilities. *See* Issues and Decision Memorandum, at Comment 6 and Since Hardware Verification Report at 2. 1) The Department will include brokerage and handling expenses, which Since Hardware incurred from a non–market economy (NME) supplier, on all of its imports of material inputs. *See* Issues and Decision Memorandum, at Comment 6 and Since Hardware Verification Report at 2 and 20.

Additionally, based on the comments received from the interested parties, we have made the following company–specific changes to Forever Holdings' margin calculation: 1) The Department has changed the source used to value welding wire from the surrogate value for welding rod to the surrogate value for welding wire. *See* Issues and Decision Memorandum, at Comment 12. 2) The Department has valued accelerant using the surrogate value for sodium nitrite instead of the surrogate value used in the *Preliminary Results*. *See* Issues and Decision Memorandum, at Comment 12.

Based on the comments received from the interested parties and findings at verification, we have made the following company–specific changes to Foshan Shunde's margin calculation: 1) The Department has recalculated Foshan Shunde's water factor of production, based on verification findings. *See* Foshan Shunde Verification Report at 2 and Memorandum to the File through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Kristina Horgan, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding Foshan Shunde Yongjian Houseware & Hardware Co., Ltd. (Foshan Shunde) Analysis Memorandum for the Final Results of Review (March 12, 2007) (Foshan Shunde Analysis Memo) at 2. 2) The Department has not used Foshan Shunde's reported plug input in the normal value calculation, based on verification findings. *See* Foshan Shunde Verification Report at 2 and Foshan Shunde Analysis Memo at 2. 3) The Department has also added Foshan Shunde's by–product to the normal value calculation, instead of subtracting it as was done in the *Preliminary Results*. *See* Issues and Decision Memorandum, at Comment 10, and Foshan Shunde Analysis Memo at 3.

For the final results, we also revised our calculation of surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, to use the 2005 annual report from Infiniti Modules Pvt. Ltd. (Infiniti Modules), and used these ratios in our margin calculations. *See* Issues and Decision Memorandum, at Comments 1 and 2. We also used the revised NME wage rate, as posted on the Department's website on February 2, 2007. *See* Issues and Decision Memorandum, at Comment 3. Finally, we revised the surrogate value for hot rolled steel for the final results. *See* Issues and Decision Memorandum, at Comment 5.

Final Results of Review

We determine that the following antidumping duty margins exist:

Exporter	Margin (percent)
Since Hardware (Guangzhou) Co., Ltd.	0.51%
Foshan Shunde Yongjian Houseware & Hardware Co., Ltd.	2.37%
Forever Holdings Ltd.	10.18%

For details on the calculation of the antidumping duty weighted–average margin for each company, see the respective company's analysis memorandum for the final results of the first administrative review of the antidumping duty order on ironing tables from the PRC, dated March 12, 2007. Public versions of these memoranda are on file in the CRU.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for ironing tables from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping

margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in these final results of review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 157.68 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as the 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 serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix I

General Issues

Comment 1: Appropriate Source for Financial Ratios Surrogate Values
Comment 2: Classification of Labor in Financial Ratios
Comment 3: NME Wage Rate
Comment 4: Zeroing
Comment 5: Appropriate Surrogate Value for Hot–Rolled Steel

Company–Specific Issues

Since Hardware–Related Issues

Comment 6: Market Economy Purchases
Comment 7: By–Product Offset

Foshan Shunde–Related Issues

Comment 8: Rescission of Shunde Yongjian and Foshan Shunde
Comment 9: Calculating a Margin for Foshan Shunde
Comment 10: By–Product Clerical Error

Forever Holdings–Related Issues

Comment 11: Rescission of Forever Holdings

Comment 12: Clerical Errors in Surrogate Values

[FR Doc. E7–5170 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review

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

SUMMARY: On September 11, 2006, the Department of Commerce (the ''Department'') published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53387 (September 11, 2006) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results* and conducted verification of one respondent, QVD Food Company, Ltd. (''QVD''). Based upon our analysis of the comments and information received, we made changes to the dumping margin calculations for the final results. *See Memorandum to the File from Julia Hancock, Senior Case Analyst, through Alex Villanueva, Program Manager; Analysis for the Final Results of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: QVD Food Company*, (March 12, 2007) (''*QVD Final Analysis Memo*''.)

EFFECTIVE DATE: March 21, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Case History

The *Preliminary Results* for this administrative review were published on September 11, 2006. Since the *Preliminary Results*, the following events have occurred:

On September 18, 2006, QVD requested an extension to submit publicly available information to be used in valuing surrogate factors of production for the final results. On September 22, 2006, the Department extended the deadline for the submission of publicly available information for the final results to November 20, 2006.

On November 15, 2006, the Catfish Farmers of America and individual processors, (''Petitioners''), requested an extension to submit publicly available information to be used in valuing surrogate factors of production. On November 17, 2006, the Department extended the deadline for the submission of publicly available information for the final results to January 4, 2007.

On January 3, 2007, QVD requested an extension to submit publicly available information to be used in valuing surrogate factors of production for the final results. On January 3, 2007, the Department issued a letter to QVD rejecting its extension request. On January 4, 2007, QVD and Petitioners submitted publicly available information for the final results.

On January 16, 2007, Petitioners and QVD submitted rebuttal comments on the January 4, 2007, submissions on publicly available information for the final results. On January 19, 2007,

Petitioners submitted a letter requesting that the Department reject QVD's January 16, 2007, rebuttal comments because they contained new factual information. On January 22, 2007, QVD submitted a letter in response to Petitioners' January 19, 2007, letter.

On January 26, 2007, the Department rejected QVD's January 16, 2007, rebuttal comments as new factual information and requested that QVD resubmit its rebuttal comments without this information. On January 29, 2007, QVD resubmitted its January 16, 2007, rebuttal comments without the new factual information.

Verification

On November 1, 2006, the Department issued verification outlines for QVD and QVD Dong Thap Food Co., Ltd. (''Dong Thap''), for the on–site verifications scheduled for November 27 through 29, 2006, and December 7 and 8, 2006. Additionally, on November 7, 2006 the Department issued verification outlines for QVD Choi Moi Farming Cooperative (''Choi Moi'') and Thuan An Seafood Co., Ltd. (''Thuan An''), for the on–site verifications scheduled for November 30, 2006 to December 6, 2006.

On November 21, 2006, Petitioners submitted pre–verification comments. On December 20, 2006, the Department issued verification outlines for QVD USA LLC (''QVD USA'') and Beaver Street Fisheries, Inc. (''BSF''), for the on–site verifications scheduled for January 11 through 16, 2007.

On January 9, 2007, Petitioners submitted pre–verification comments on QVD USA and BSF. On January 29, 2007, the Department issued the verification report of QVD, Dong Thap, Choi Moi, and Thuan An. Additionally, on January 30, 2007, the Department issued the verification report of QVD USA and BSF. On February 6, 2007, QVD submitted comments on the Department's January 29, 2007, verification report.

On March 9, 2007, the Department placed copies of the QVD, Dong Thap, Choi Moi, Thuan An, QVD USA, and BSF verification exhibits on the record.

Case Briefs and Rebuttal Briefs

On September 22, 2006, the Department extended the deadline for the submission of case briefs and rebuttal briefs. On November 17, 2006, the Department further extended the deadline for case briefs and rebuttal briefs.

On February 1, 2007, Petitioners submitted a letter to the Department requesting an extension of the deadline for the submission of case briefs and rebuttal briefs. On February 1, 2007, the Department again extended the deadline for case briefs and rebuttal briefs.

On February 2 and 6, 2007, Valley Fresh, Inc., QVD, and Petitioners submitted case briefs. On February 6, 2007, the Department requested comments on the revised FY 2004 non–market economy (''NME'') wage rates, to be submitted with the rebuttal briefs. Additionally, on February 12, 2007, the Department extended the deadline for interested parties to submit rebuttal briefs.

On February 13, 2007, the Department confirmed that no interested party would be submitting comments regarding QVD's February 6, 2007, letter, regarding the attachment contained in the Department's January 29, 2007, verification report. On February 13, 2007, the Department again extended the deadline for interested parties to submit rebuttal briefs. On February 14, 2007, QVD and Petitioners submitted rebuttal briefs, which also contained comments on the Department's FY 2004 revised wage rates.

On March 9, 2007, the Department rejected Valley Fresh's March 5, 2007, submission as untimely, factual information.

Hearing

On October 11, 2006, Petitioners submitted a request for a public hearing. On February 6, 2007, Petitioners submitted a request for a portion of the hearing to be closed. On February 15, 2007, the Department issued a letter to interested parties regarding the schedule of the hearing. Additionally, on February 16, 2007, the Department issued two letters regarding the schedule and the logistics of the hearing.

On February 16, 2007, Petitioners withdrew their October 11, 2006, and February 6, 2007, requests for a public and closed hearing. On February 21, 2007, the Department issued a letter to interested parties cancelling the hearing.

Extension of the Final Results

On November 24, 2006, the Department extended the time limit for completion of the final results of the instant administrative review. *See Notice of Extension of Time Limit for the Final Results of the Second Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 71 FR 67849 (November 24, 2006).

QVD

On September 6, 2006, QVD submitted comments alleging that there were clerical errors in the *Preliminary Results*. On September 8, 2006, Petitioners submitted rebuttal comments in response to QVD's September 6, 2006, letter. On September 11, 2006, QVD submitted rebuttal comments in response to Petitioners' September 8, 2006, rebuttal comments. Additionally, on September 11, 2006, the Department issued a letter to QVD regarding QVD's allegation of clerical errors in the *Preliminary Results*.

On September 18, 2006, the Department issued a supplemental questionnaire to QVD. On September 29, 2006, QVD requested an extension to respond to the Department's supplemental questionnaire. Additionally, on September 29, 2006, the Department extended the deadline for QVD to respond to the supplemental questionnaire to October 19, 2006.

On October 17, 2006, QVD submitted a second extension request to respond to the Department's supplemental questionnaire. On October 17, 2006, the Department extended the deadline for QVD to respond to its supplemental questionnaire to October 23, 2006. On October 23, 2006, the Department received QVD's supplemental questionnaire response.

On November 3, 2006, Petitioners submitted comments to the Department regarding QVD's October 23, 2006, supplemental questionnaire response. On November 8, 2006, the Department issued a supplemental questionnaire to QVD.

On November 14, 2006, the Department issued a letter to QVD requesting that QVD make certain information public information. On November 15, 2006, QVD submitted an extension request for responding to the Department's November 8, 2006, supplemental questionnaire. Additionally, on November 16, 2006, QVD submitted a letter stating that it does not consent to the public release of certain information. On November 17, 2006, the Department issued the verification outline to QVD. On November 21, 2006, QVD submitted a response to the Department's November 8, 2006, supplemental questionnaire.

On January 4, 2007, QVD submitted a letter to the Department supplementing its October 23, 2006, supplemental questionnaire response. On January 16, 2007, QVD submitted pre–verification corrections.

On February 1, 2007, the Department issued a letter to QVD requesting that QVD submit QVD's U.S. sales and factors of production (''FOPs'') databases with the corrections from verification. On February 7, 2007, QVD submitted a revised version of its U.S. sales and FOPs databases.

Scope Of The Order

The product covered by this order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly–flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone–in, cross-section cuts of dressed fish. Nuggets are the belly–flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000[1], 1604.19.5000[2], 0305.59.4000[3], 0304.29.6033[4] (Frozen Fish Fillets of the species Pangasius including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5] This order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis Of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (''*Final Decision Memo*''), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (''CRU''), room B–099 of the main Department building. In addition, a copy of the *Final Decision Memo* can be accessed directly on our Web site at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Final Decision Memo* are identical in content.

Verification

As provided in section 782(i) of the of the Tariff Act, as Amended (''the Act''), we conducted verification of the information submitted by QVD, its affiliated Vietnamese companies, Choi Moi and Dong Thap, its Vietnamese toller, Thuan An, and its affiliated U.S. importer, QVD USA and other U.S. importer, BSF, for use in our final results. *See Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from, Julia Hancock, Senior Case Analyst, and Javier Barrientos, Financial Analyst, AD/CVD Operations, Office 9, Subject: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, RE: Verification of Sales and Factors of Production for Vietnam Companies*, (January 29, 2007) (''*Vietnam Verification Report*''); *Memorandum to the File, through, Alex Villanueva, AD/CVD Operations, Office 9, from, Julia Hancock, Senior Case Analyst, and Irene Gorelik, Case Analyst, AD/CVD Operations, Office 9, Subject: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, RE: Verification of Sales of U.S. Companies*, (January 30, 2007) (''*U.S. Verification Report*''). For all companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the Respondents.

Changes Since The Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to the margin calculation for QVD for the final results. The following changes are addressed in the *Final Decision Memo*: (1) a recalculation of QVD's weighted–average database addressed in Comment 13, (2) the use of Choi Moi and Company H's FOPs for calculation of NV addressed in Comment 1, (3) the use of only QVD USA's CEP sales to the first unaffiliated customer addressed in Comment 3, (4) the application of partial adverse facts available to Choi Moi's unreported harvest labor addressed in Comment 3, (5) the calculation of QVD's cash deposit and assessment rates on a per–unit basis in Comment 6, (6) changes to the following surrogate values: surrogate financial ratios, fish waste, labor, and ice addressed in Comments 9 and 10, and (7) changes to QVD's margin program language addressed in Comments 8 and 11. *See QVDFinal Analysis Memo. See also Memorandum from Julia Hancock, Senior Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The File, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (''Vietnam''): Surrogate Values for the Final Results*, dated March 12, 2006 (''*Final Factors Memo*'').

Adverse Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthemore, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any

[1] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number*, (March 1, 2007). This HTS went into effect on March 1, 2007.

[2] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number*, (March 1, 2007). This HTS went into effect on March 1, 2007.

[3] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Second Addition of Harmonized Tariff Number*, (February 2, 2007). This HTS went into effect on February 1, 2007.

[4] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Addition of Harmonized Tariff Number*, (January 30, 2007). This HTS went into effect on February 1, 2007.

[5] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

previous review, or any other information placed on the record. *See* section 776(b) of the Act.

Cataco

In the *Preliminary Results*, the Department assigned total AFA to Cataco. The Department did not receive any comments regarding the Department application of total AFA to Cataco. Therefore, for the final results, we continue to apply AFA to Cataco. However, the Department did receive comments on the calculation of Cataco's cash deposit and assessment rates addressed in Comment 5 of the *Final Decision Memo*, Cataco's cash deposit and assessment rates remain unchanged for these final results.

Vietnam–Wide Entity

In the *Preliminary Results*, the Department assigned total AFA to the Vietnam–Wide Entity, including Can Tho Animal Fishery Products Processing Export Enterprise (''Cafatex''), Mekong Fish Company (''Mekonimex''), Nam Viet Company, Ltd. (''Navico''), Phan Quan Trading Co., Ltd. (''Phan Quan''), An Giang Agriculture Technology Service Company (''ANTESCO''), Anhaco, Binh Dinh Import Export Company (''Binh Dinh''), Vinh Long Import–Export Company (''Vinh Long''), and An Giang Agriculture and Foods Import–Export Company (''Afiex''). The Department did not receive any comments regarding the Vietnam–Wide Entity. Therefore, for the final results, we continue to apply AFA to the Vietnam–Wide Entity and continue to treat Cafatex, Mekonimex, Navico, Phan Quan, Afiex, ANTESCO, Anhaco, Binh Ding, and Vinh Long as part of the Vietnam–Wide Entity.

Final Results Of Review

The weighted–average dumping margins for the POR are as follows:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted–Average Margin (Percent)
QVD	21.23
Cataco	80.88
Vietnam–Wide Entity[6]	63.88

[6] The Vietnam-wide Entity includes Cafatex, Mekonimex, Navico, Phan Quan, Afiex, ANTESCO, Anhaco, Binh Ding, and Vinh Long.

Assessment

The Department will determine, and the U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer–specific duty assessment rates on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. In this and future reviews, we will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (i.e., per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of this administrative review.

Cash Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously 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 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 (including Cafatex, Mekonimex, Navico, Phan Quan or Afiex) will be the Vietnam–wide rate of 63.88 percent, as explained in the *Final Decision Memo*. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

[7] In our *Preliminary Results*, for those respondents who reported an entered value, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales of each applicable importer to calculate an *ad valorem* assessment rate.

Reimbursement Of Duties

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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I – Decision Memorandum

Issues For The Final Results:

Comment 1: Affiliation Issues
- A. Company H
- B. Choi Moi
- C. Company A2, Company B, and Company K
- D. QVD USA/BSF and Constructed Export Price (''CEP'') Sales

Comment 2: Total Adverse Facts Available
- A. CEP Sales
- B. Choi Moi
- C. Thuan An
- D. Dong Thap
- E. CONNUM–Specific Factors of Production (''FOPS'')

Comment 3: Partial AFA for FOPs
- A. Choi Moi's FOPs
- B. Thuan An's FOPs
- C. Company H's Fish Waste
- D. CONNUM–Specific FOPs
- E. Factor X

Comment 4: Valley Fresh

Comment 5: Reimbursement

Comment 6: Cash Deposit and Assessement

Comment 7: Corrections to U.S. Sales
A. Entered Value
B. International Freight
C. U.S. Inland Freight from Warehouse
Comment 8: Surrogate Values
A. Fish Waste
B. Whole Fish
C. Ice
D. Wage Rates
Comment 9: Surrogate Financial Ratios
A. Bionic Seafoods
B. Calculation of Ratios
Comment 10: Clerical Errors in Margin Calculation
A. Conversion of Water
B. Assessment Rate: Importer of Record vs. Customer Code
C. Exchange Rates
D. Containerization
Comment 11: CEP Verification Report
Comment 12: Denominator and Numerator of FOPs
A. Choi Moi's Denominator
B. Thuan An and Dong Thap's Numerator
C. Thuan An's Denominator
D. Dong Thap's Numerator and Denominator
Comment 13: Thuan An's Financial Statements

Comment 14: Gross Weight vs. Net Weight

Comment 15: New Factual Information
Comment 16: Clarification of Vietnam Verification Report

[FR Doc. E7–5178 Filed 3–20–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies in Proceedings Involving Non–Market Economy Countries: Surrogate Country Selection and Separate Rates

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

ACTION: Request for Comment.

SUMMARY: The Department of Commerce (''the Department'') requests public comment on two aspects of its non–market economy (''NME'') methodology in antidumping proceedings. First, the Department seeks comment on certain aspects of the methodology by which it selects an economically comparable surrogate market economy country for the NME country under investigation or review. Second, the Department is requesting comment on the methodology under which individual NME exporters can demonstrate independence from government control of their export activities and thereby qualify for separate rate status.

DATES: Comments must be submitted by thirty days from the publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW, Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Economist, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202–482–1579 or 202–482–1843, respectively.

Issue One: Surrogate Country Selection

Background

In antidumping proceedings involving NME countries, the Department calculates normal value by valuing the NME producer's factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. The Tariff Act of 1930, as amended (''the Act''), provides broad discretion in the selection of surrogate market economy countries to value NME factors of production. In particular, section 773(c)(1)(B) of the Act reads:

> ...the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

Section 773(c)(4) of the Act adds:

> The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are
> A. at a level of economic development comparable to that of the nonmarket economy country, and
> B. a significant producer of comparable merchandise.

The Act does not provide a definition of ''comparable level of economic development,'' ''comparable merchandise,'' or ''significant producer.'' However, the Department's regulations do provide guidelines for comparing levels of economic development. 19 CFR 351.408(b) reads:

> *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy country under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on per capita GDP as the measure of economic comparability.

Finally, the Department provided further guidance on economic comparability in a 2004 Policy Bulletin, establishing a sequential procedure for selecting a surrogate country, with economic comparability being the first factor considered. Import Administration Policy Bulletin 04.1 states[1]:

> First, early in a proceeding, the Operations team sends the Office of Policy (''OP'') a written request for a list of potential surrogate countries. In response, OP provides a list of potential surrogate countries that are at a comparable level of economic development to the NME country. OP determines economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the World Development Report (The World Bank). The surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability. Both the team's written request and OP's response should be made available to interested parties by being placed on the record of the proceeding.

As noted above, in each proceeding, the Department generates a list of potential surrogate countries. In constructing this list, the Department orders the per capita gross national income (''GNI'') figures as reported in the latest available published edition of the World Bank's *World Development Report*, disregarding countries designated as NMEs during the period of review.[2] From among the remaining group of countries, the Department selects approximately five with similar levels of economic development to the NME that have offered, in the

[1] The full text of the policy bulletin can be found at http://ia.ita.doc.gov/policy/bull04-1.html.

[2] The Department now uses per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development.

Department's experience, the statistical sources and breadth of information that might make them suitable surrogate countries in the specific proceeding. The Department places this list on the record and invites comment from the interested parties, who may suggest that the Department consider other economically comparable surrogate countries. However, absent comment from parties, the Department normally will determine, from among the countries on this list, which country produces merchandise comparable to the subject merchandise in significant quantities and offers adequate data upon which to base the review.

The process of selecting an appropriate surrogate country for the NME is a crucial element of an NME antidumping proceeding, particularly since the regulations direct the Department to normally value all of the NME factors of production with data from the primary surrogate country. *See* 19 CFR 351.408(c)(2). Because of the importance of finding a suitable surrogate country, the Department does not consider a country's level of economic comparability in isolation, but considers whether the potential surrogate country is a significant producer of comparable merchandise and offers the data necessary to conduct the proceeding. See Policy Bulletin 04.01. Accordingly, as the footnotes to the Policy Bulletin cited above clarify, the statute and regulations do not restrict the Department's analysis simply to a review of per capita GNI, as such an analysis would unreasonably limit the Department from choosing the most appropriate surrogate country. As the footnotes state, the Department ''excludes countries that are technically presumed to be market economies, but which in OP's judgment are unsuitable sources for factor values'' and ''current practice reflects in large part that the statute does not require the Department to use a surrogate country that is at a level of economic development most comparable to the NME country.'' Indeed, the Department often disregards certain countries that it deems to be unsuitable sources for factor values based on factors other than per capita GNI. For example, using the current 2005 GNI data, the closest country to Vietnam's level of economic development (at $620 per capita) is Sudan, with $640 per capita. Sudan, however, with its ongoing internal conflicts, would be unlikely to offer adequate data on which to base the dumping calculation, so the Department turns instead to other countries as potential surrogates.

Request for Comment

The selection of an appropriate surrogate country is, in large part, necessarily a case–specific issue, since the range of available data and production of comparable merchandise vary with the product under investigation or review. The specific question of economic comparability does remain largely constant from case to case, however, and it is on this aspect of the surrogate country selection process that the Department is now requesting comment. Specifically, the Department seeks comment on (1) how, given the requirement to base the determination on per capita income, the Department should determine which countries are economically comparable to a given NME country, and (2) whether and on what basis the Department should disregard certain economically comparable countries as lacking data suitable for valuing the factors of production.

Regarding the first question, on how the Department determines economic comparability, the Department uses per capita income to measure comparability, but even if a country is the most economically comparable to the NME, this does not mean that the Department is obliged to use that country as the primary surrogate. Often, there is a range of countries from which the Department could select the most appropriate potential surrogate based on their relative production of comparable merchandise, and on data considerations. *See, e.g.*, Memorandum from Ron Lorentzen to Howard Smith *Antidumping Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Request for a List of Surrogate Countries* (January 22, 2007). The Department is now soliciting comment on the extent to which, if any, there are limitations as to this range. For example, at what point should differences in per capita GNI of a potential surrogate and the NME be ''too large'' for the two to be considered ''economically comparable?

Furthermore, should the Department develop a standard for deciding which countries to include on the initial list of potential surrogate countries? What could be an appropriate standard for determining which countries are likely to offer the necessary data for conducting an antidumping proceeding? As noted above, interested parties will continue to have the opportunity to suggest the use of economically comparable countries that do not appear on the initial list of potential surrogates. Nevertheless, the Department first examines (absent any submission from parties) this initial list of countries to determine whether any of the included countries are appropriate surrogate countries. Accordingly, the Department welcomes comment on how this list should be constructed. Should this list be comprehensive (which may require that the Department and interested parties examine the extent of production of comparable merchandise in every economically comparable country), or could the list be limited in some way? Is there a broad measure of countries' data quality (for example, the availability, reliability, and accuracy of import statistics) that the Department could use to determine at the outset of the proceeding a subset of the economically comparable countries for consideration as a primary surrogate? Should the Department consider whatever countries remain after applying these data screens, or should the Department ensure that the final list includes a balance of countries both above and below the NME's per capita income?

Issue Two: Separate Rates In Nme Antidumping Proceedings

Background

In an NME antidumping proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities through a ''separate rates'' test. See *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). The Department's separate rates test is not concerned, in general, with macroeconomic border–type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent the dumping of merchandise in the United States. Rather, the test focuses on controls over the decision–making process on export–related investment, pricing, and output decisions at the individual firm level. See *Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less Than Fair Value: Honey from the*

People's Republic of China, 60 FR 14725, 14727 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control in its export activities to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (Silicon Carbide). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). In order to request and qualify for a separate rate, it is the Department's practice that a company must have exported subject merchandise to the United States during the period of investigation or review, and it must provide information responsive to the following considerations:

1. Absence of *De Jure* Control: The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

2. Absence of *De Facto* Control: Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control over its export activities: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the central, provincial, or local governments in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

The Department last invited public comment on its separate rates methodology in a process that culminated in April 2005, when it announced a change in practice in the **Federal Register** (70 FR 17233) and posted a concurrent Policy Bulletin on the Import Administration website (Import Administration Policy Bulletin 05.1, available at *http://ia.ita.doc.gov/policy/bull05–1.pdf*). Prior to that, the Department published three notices in the **Federal Register** soliciting comment on its separate rates practice (69 FR 24119, 69 FR 56188, and 69 FR 77722). The Department was prompted to request public comment on this issue because of the large and increasing numbers of requests for separate rates status the Department had received in recent years, which led to two concerns. The first is that it proved increasingly difficult to evaluate the large number of separate rate requests made by respondents. The second concern was whether the implementation of the separate rates test could be improved to more effectively determine whether respondents act, *de facto*, independently of the government in their export activities.

Taking into account comments submitted by the public, the Department adopted an application process for evaluating separate rate requests by non–investigated firms. This application process, which in subsequent cases was extended from initial investigations to administrative reviews, streamlined the process of evaluating separate rates requests but did not alter the threshold of eligibility for a separate rate, which remained an absence of *de jure* and *de facto* government control over a firm's export activities. Despite the introduction of the application process for evaluating requests for separate rates status, however, the administrative burden on the Department of evaluating separate rates requests continued to increase. As a result, the Department began to employ a separate rates ''certification'' process in certain recent reviews involving numerous potential respondents, in which firms that had already obtained a separate rate in a previous segment were able to submit a certification form in lieu of the full application. *See Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China* 71 FR 11394, (March 7, 2006), and *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China* 71 FR 17813, (April 7, 2006).

Request for Comment

The Department is now requesting public comment on the separate rates test as a whole and how its implementation could be further improved. As noted above, while the Department has revised its administration of the separate rates test over the past ten years, it has not modified the test itself during this time. The Department has also received comments from certain parties alleging that testing firms for independence over their export activities is no longer necessary in light of economic reforms that have occurred in particular NME countries. The Department is therefore issuing this notice to invite comments concerning whether alternatives to its current separate rates test should be considered, *i.e.*, on whether a reconsideration of the test as outlined in *Sparklers* and *Silicon Carbide* is warranted. The Department is also interested in comments on whether the Department should consider revisions in the implementation of the current test, particularly on the proper balance between efficiency and enforcement in the implementation of the separates rates test, *i.e.*, on whether the Department can reduce the administrative burden on both the Department and on interested parties in operationalizing the test. In providing comment, however, the Department requests that parties address the real possibility that streamlining the test might impact the enforcement goal of the test, that only firms operating independently of government control over their export activities become eligible for an individually calculated rate.

Submission of Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends

submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster–support@ita.doc.gov*.

Dated: March 9, 2007.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5169 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Survey of Information Habits and Preferences of Millennial Scientists

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 21, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Terrie Wheeler, Assistant Chief, Information Services Division, at (301) 975–3772, *terrie.wheeler@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This study will determine how the next generation of scientists, frequently referred to as the Millennial Generation, will seek scientific information in their research. This generation was born between 1982 and 2000. Having grown up with information technology, general studies show this population has technological preferences for receiving and integrating content, and this study is to learn if this extends to the scientific content among young scientists. It will identify most useful (and most desired) devices and formats, so that the Information Services Division can plan to serve the next generation of scientists. The findings will impact how digital scientific content is harvested, identified using metadata, stored, accessed, and disseminated. The project will identify young scientists' preferences for content format and ease of assimilation into current processes. Specifically the project aims to learn: (1) Which library resources and information services are most valuable and why, and (2) what scientific library resources do not exist that could, or are not yet robust enough to be valuable. Further the study aims to learn: (3) In what specific ways are commercial Internet tools both successful and unsuccessful in helping find answers, (4) which platforms and devices are most helpful and why, and (5) which technologies help support collaboration with peers. The project plans to use Summer Undergraduate Research Fellowship (SURF) students who work at the National Institute of Standards and Technology every summer as the test population. The survey is voluntary, and all information gathered will be carefully safeguarded.

II. Method of Collection

The study will use an electronic survey form. SURF students will have the URL sent to them in an e-mail message so they may take the survey on any computer with a Web browser if they choose.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Students enrolled in the NIST SURF program for 2007.

Estimated Number of Respondents: 100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 33.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5097 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Community Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 21, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Philip Watson, (206) 947–3107 or *philip.watson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect information pertaining to the economic utilization of marine resources by communities on the West Coast, in order to improve fishery management; satisfy NMFS' legal mandates under Executive Order 12866, Title 8 of the Magnuson Steven Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), as amended in 2007; and quantify achievement of the performance measures in the NMFS Strategic Operating Plans. The data collected will enable researchers to determine the degree of dependence of these communities on marine resource based activities and will inform policy makers as to the likely economic impacts of fishery and marine regulations on these communities.

Economic data for selected U.S. coastal communities will be collected for each of the following groups of operations: (1) Locally operated businesses; (2) resident households; and (3) visitors. In general, local businesses will be asked questions concerning their sources of revenue, location and levels of expenditures, ownership, dependence on the fisheries and other marine resources, and fishery employment. Households will be asked questions concerning their sources of income, the location of expenditures made, and their dependence on fishing and other marine resources. Visitors will be asked questions concerning region of residence, expenditures made while visiting, and reasons for visiting. The data collection efforts will be coordinated to reduce the additional burden for those who own multiple businesses. Participation in these data collections will be voluntary.

The data will be used to construct a regional economic simulation model to analyze fishery management alternatives and to investigate the degree of economic dependence on marine resources in the respective communities.

II. Method of Collection

Data will be collected via in-person interviews, telephone interviews and/or mail questionnaire.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 2,400.

Estimated Time per Response: 1 hour per survey of businesses; 30 minutes per survey of households; and 15 minutes per survey of individual visitors.

Estimated Total Annual Burden Hours: 998.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 15, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5094 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031507A]

Endangered Species; File No. 1599

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc (Michael J. Bresette-Responsible Party), 4160 NE Hyline Dr, Jensen Beach, FL, 34957, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 20, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: File No. 1599.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of the proposed research is to continue long term monitoring of sea turtles foraging in the Key West National Wildlife Refuge and surrounding waters. The applicant would net or hand capture up to 200 green, 200 loggerhead, 50 hawksbill, and 10 Kemp's ridley sea turtles per year. The turtles would be measured, weighed, flipper and Passive Integrated Transponder tagged, blood and tissue sampled, marked with paint, and released. A subset of green turtles would be lavaged and satellite tagged. The permit would be valid for five years.

Dated: March 15, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–5174 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022007C]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1–year letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force, to take four species of seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California.

DATES: Effective March 17, 2007, through March 16, 2008.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning one of the contacts listed below (see **FOR FURTHER INFORMATION CONTACT**). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the National Marine Fisheries Service (NMFS) 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 regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and northern fur seals (*Callorhinus ursinus*), by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 6, 2004 (69 FR 5720), and remain in effect until February 6, 2009. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile and rocket launches at VAFB.

This LOA is effective from March 17, 2007 through March 16, 2008 and authorizes the incidental take of the four marine mammal species listed above that may result from the launching of up to 30 space and missile vehicles and up to 20 rockets annually from VAFB, as well as from aircraft and helicopter operations. Harbor seals haul-out on several sites on VAFB, and harbor seals, California sea lions, elephant seals, and northern fur seals are found on various haul-out sites and rookeries on San Miguel Island (SMI). Currently, five space launch vehicle programs use VAFB to launch satellites into polar orbit: Atlas IIAS, Delta II, Minotaur, Taurus, and Titan (II and IV). Also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts are launched from VAFB.

The activities under these regulations create two types of noise: continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and helicopter operations may cause the animals to move towards or enter the water. Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) all aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries; (2) missile and rocket launches must, whenever possible, not be conducted during the harbor seal pupping season of March through June; (3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June; and 4) monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. VAFB will also use monitoring surveys, audio-recording equipment, and time-lapse video to monitor the animals before, during, and after rocket launches, and to measure sound levels generated by the launches. Reports will be submitted to NMFS after each LOA expires, and a final report will be submitted before the rule expires.

Summary of Request

NMFS received a request for a LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to rocket and missile launches at VAFB.

Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2006 LOA, VAFB submitted an annual report on the rocket launches at VAFB. A

summary of that report (SRS Technologies, 2007) follows.

A total of five space vehicle launches and five launches of other vehicle types were conducted at VAFB between January 1, 2006, and December 31, 2006. The dates, locations, and monitoring required for the launches are summarized in Tables 1 and 2.

TABLE 1. SUMMARY OF SPACE VEHICLE LAUNCHES AND MONITORING THAT OCCURRED AT VAFB IN 2006.

Vehicle	Date	Time	Launch Site	Monitoring Conducted
Minotaur COSMIC	14-Apr	18:40	SLC-8	South VAFB
Delta II CLOUDSAT & CALIPSO	28-Apr	3:02	SLC-2	North VAFB and SMI
Delta IV NROL-22	27-Jun	20:33	SLC-6	South VAFB and SMI
Delta IV DMSP-17	4-Nov	5:53	SLC-6	South VAFB
Delta II NROL-21	14-Dec	13:00	SLC-2	SMI

TABLE 2. SUMMARY OF OTHER LAUNCHES AND MONITORING THAT OCCURRED AT VAFB IN 2006.

Vehicle	Date	Time	Launch Site	Monitored
Minuteman III SERV-3	16-Feb	0:01	LF-10	No
Minuteman III GT 190-GM	7-Apr	6:00	LF-26	Yes
Minuteman III GT 191-GM	14-Jun	1:22	LF-04	Yes
Minuteman III GT 192-GT	20-Jul	3:14	LF-09	No
Ground based Interceptor FTG-02	1-Sep	10:39	LF-23	No

Two of the Minuteman III and the one Ground Based Interceptor launches occurred outside of the harbor seal pupping season, and a sonic boom of greater than 1 lb/ft2 (psf) was not predicted to occur at SMI as a result of the launch; therefore, no biological monitoring was required or conducted. With the exception of the Delta IV NROL–22 and Delta IV DMSP–17, acoustic measurements of all of the vehicles launched in 2006 had previously been taken and were not required or conducted again.

VAFB also conducted 578 helicopter flights and 13,644 airfield operations in 2006. There were no observed effects to pinnipeds from these activities. Also, no sea lion pups were born on VAFB in 2006.

Minotaur COSMIC

Although no sonic boom greater than 1 psf was predicted at SMI, the Minotaur COSMIC vehicle was launched during the harbor seal pupping season; therefore, monitoring was required at VAFB. Monitoring surveys at First Ledge and Flat Iron Rock haul-out sites in the days surrounding the launch revealed between 28 and 149 adult and juvenile seals and between nine and 29 pups. Between 11 and 76 seals and five to 29 pups were found at the Amphitheatre, Brokeback, and Weaner Cove haul-out and pupping sites in the days just preceding and following the launch. The highest numbers of seals and pups were seen on April 15, the day after the launch. A video recording during the launch showed 23 of the 24 harbor seals present at the First Ledge haul-out site entering the water at the time of the launch. The remaining seal stopped just short of entering the water. No seals were seen returning to the beach within 13 minutes of the launch, at which point darkness occurred. A harbor seal pup was found ''fresh dead'' 18 hours post-launch at the First Ledge haul-out site. This is discussed in further detail below.

Delta II CLOUDSAT & CALIPSO

The Delta II CLOUDSAT & CALIPSO rocket was launched during harbor seal pupping season, and a sonic boom of greater than 1 psf was predicted to reach SMI, so monitoring was required at both SMI and VAFB. At the Spur Road haul-out site on north VAFB, a maximum of 47 seals were seen during pre-launch surveys, and a maximum of 27 were seen in the days immediately following the launch. No pups were seen in the days surrounding the launch. No video recording was made because of the early hour of the launch. Point Bennett and Otter Harbor haul-out sites were monitored on SMI on the days surrounding the launch. Approximately 250 California sea lions and 100 northern elephant seals were seen. No sonic boom was heard by the monitors or registered on the acoustic monitoring equipment. There was no evidence of injury, mortality, or abnormal behavior in any harbor seals at VAFB or the monitored pinnipeds on SMI as a result of this launch.

Delta IV NROL–22

The Delta IV NROL–22 was launched during harbor seal pupping season, and a sonic boom of greater than 1 psf was expected to reach SMI; therefore, monitoring was required at both SMI and VAFB. Diurnal observations were conducted at Flat Iron Rock on south VAFB between 23 and 29 June. Pre-launch counts recorded a maximum of 263 seals and no dependent pups, and post-launch counts found a maximum of 243 seals and no dependent pups. A follow-up survey on 7 July recorded between 127 and 205 seals. Video recording during the launch was not possible because it was too dark. Monitors also surveyed Glass Float Beach on SMI from 25 through 29 June. A sonic boom was heard. All of the sea lions raised their heads. Thirty percent entered the water; 40 percent moved rapidly to the waterline but did not enter; and the remaining 30 percent stood alert and gradually moved toward the wave slopes. All harbor seals present immediately entered the water and swam away. There was no evidence of injury or mortality to any pinnipeds monitored on VAFB or SMI as a result of this launch. Due to an equipment malfunction during the calibration period, the amplitude of the sonic boom could not be determined. Additional measurements for this vehicle will be taken in the future.

Delta IV DMSP–17

Though no sonic boom greater than 1 psf was predicted at SMI, and the launch occurred outside of the harbor seal pupping season, monitoring was still required for the Delta IV DMSP–17 launch, as per the implementing regulations (69 FR 5720, February 6, 2004). According to the regulations, acoustic and biological monitoring is

required for the first three launches of the Delta IV vehicle. Diurnal observations were made at Flat Iron Rock on south VAFB. Pre-launch counts indicate a daily maximum of seals ranging between 26 and 87 seals and between 11 and 68 seals post-launch. No dependent pups were seen in the days surrounding the launch. As the launch occurred in the pre-dawn hours, no video recording was taken. It is unknown if any seals were present at the time of the launch; however, the high level of the tide indicates that it is unlikely. The 1–hour average sound level during the hour of the Delta IV launch was 69.1 decibels (dB), approximately 17 dB above the average background noise levels at this site.

Two juvenile harbor seals (approximately seven months old) were captured for hearing tests using auditory brainstem response (ABR) technique just prior to the Delta IV DMSP–17 launch under Scientific Research Permit No. 859–1680. They were held for a total of 2 days, and were ABR tested prior to and then again after the launch. Each seal was fitted with a plastic numbered tag in the hind flipper and a VHF radio transmitter immediately prior to release. There was no evidence indicating that the launch noise from the Delta IV caused a loss in hearing acuity. There was no evidence of injury, mortality, or abnormal behavior in any of the monitored harbor seals at VAFB as a result of this launch.

Delta II NROL–21

No monitoring was conducted on VAFB for the Delta II NROL–21 launch since it occurred outside of the harbor seal pupping season. However, biological and acoustic monitoring were conducted on SMI. Survey counts found 521 sea lions and 75 northern elephant seals. No sonic boom was heard or recorded. There was no evidence of injury, mortality, or abnormal behavior of any monitored pinnipeds on SMI as a result of this launch.

Minuteman III

Two of the Minuteman III launches (7 April and 14 June) occurred during the harbor seal pupping season, so monitoring was required at VAFB. Between seven and 16 seals and one dependent pup were seen in the days surrounding the April 7 launch at Lion's Head haul-out site. Between five and 11 seals and one weaned pup were seen at the same site in the days surrounding the June 14 launch. Video recordings were not possible during the time of either launch due to darkness. However, it is unlikely that any seals were present since the launches occurred during high tide. There was likely only a small, temporary effect on hearing, if any.

Harbor Seal Pup Mortality

One dead harbor seal pup was observed at First Ledge on VAFB on April 15, approximately 18 hours post-launch of the Minotaur COSMIC rocket. The pup appeared to be ''fresh dead'' when first observed at 1430 PDT. VAFB monitors were unable to determine if the death was related to the launch. The area where the pup was found has a lot of ledges and caves, making it difficult to see all areas at the site. It is possible the pup washed up dead on the beach, but there is no way to know for certain. The animal did not show any signs of being orphaned. Gulls were already pecking at the carcass when it was discovered, so there was no way to assess the injuries. Also, approaching the animal would have disturbed other mother/pup pairs on the beach.

Additional conditions have been added to the 2007 LOA relating to serious injury and mortality. No take by serious injury or mortality is authorized in the LOA. VAFB is required to immediately contact staff at the NMFS Office of Protected Resources, Permits, Conservation, and Education Division, as well as staff at the Southwest Regional Office, NMFS if a dead pinniped is found during the monitoring period following a launch. In addition, the National Stranding Network must be notified immediately so that personnel can retrieve the carcass for examination, whenever possible. Every attempt will be made to collect a dead pinniped carcass discovered within 48 hours following a launch provided that the collection does not result in the disturbance (flushing) of other animals from the site. Any carcasses collected will be transferred to the Long Marine Laboratory in Santa Cruz, California for complete necropsy.

Authorization

The U.S. Air Force complied with the requirements of the 2006 LOA, and NMFS has determined that the marine mammal take resulting from the 2006 launches is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued a LOA to the 30th Space Wing, U.S. Air Force authorizing the take by harassment of marine mammals incidental to missile and rocket launches at VAFB. Issuance of this LOA is based on findings described in the preamble to the final rule (67 FR 5720, February 6, 2004) and supported by information contained in VAFB's 2006 annual report that the activities described under this LOA will result in the take of small numbers of marine mammals, will have a negligible impact on marine mammal stocks, and will not have an unmitigable impact on the availability of the affected marine mammal stocks for subsistence uses.

Dated: March 13, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–5072 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031607A]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 2–6, 2007. The Council meeting will begin on Monday, April 2, at 2 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 2 p.m. until 3 p.m. on Monday, April 2 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Seattle Marriott Hotel, 3201 South 176th Street, Seattle, WA 98188; telephone: (206) 241–2000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Enforcement Issues

1. U. S. Coast Guard Annual Fishery Enforcement Report

C. Administrative Matters

1. Future Council Meeting Agenda Planning
2. Magnuson-Stevens Act Reauthorization Implementation
3. Approval of Council Meeting Minutes
4. Appointments to Advisory Bodies, Standing Committees, and Other Forums, Including any Necessary Changes to Council Operating Procedures
5. Ecosystem Fishery Management Plan
6. Legislative Matters
7. Council Three-Meeting Outlook, Draft June 2007 Council Meeting Agenda, and Workload Priorities

D. Open Public Comments on Non-Agenda Items

E. Groundfish Management

1. NMFS Report
2. Consideration of 2007 Inseason Adjustments
3. Amendment 15: American Fisheries Act Issues
4. Final Action on 2007 Inseason Adjustments

F. Habitat

Current Habitat Issues

G. Salmon Management

1. NMFS Recovery Plan for Klamath River Coho
2. Tentative Adoption of 2007 Ocean Salmon Management Measures for Analysis
3. Methodology Review Process and Preliminary Topic Selection for 2007
4. Clarify Council Direction for 2007 Ocean Salmon Management Measures (if Needed)
5. Final Action on 2007 Ocean Salmon Management Measures
6. Clarify Final Action on 2007 Ocean Salmon Management Measures (if Needed)

H. Pacific Halibut Management

Incidental Catch Regulations for the Salmon Troll and Fixed Gear Sablefish Fisheries

I. Marine Protected Areas

Review of Oregon Ocean Policy Advisory Council Report

J. Highly Migratory Species Management

1. NMFS Report
2. Albacore Fishing Effort Characterization
3. Longline Fishery Experimental Fishery Permit
4. Yellowfin Tuna Overfishing
5. Council Operating Procedure for Coordination with Regional Fishery Management Organizations
6. Initial Guidance for Inter-American Tropical Tuna Commission Meeting

SCHEDULE OF ANCILLARY MEETINGS

Monday, April 2, 2007	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Habitat Committee	9 a.m.
Legislative Committee	9:30 a.m.
Methodology Evaluation Workgroup	1 p.m.
Enforcement Consultants	4:30 p.m.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
Tuesday, April 3, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Enforcement Consultants	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
Wednesday, April 4, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Enforcement Consultants	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Highly Migratory Species Advisory Subpanel	1 p.m.
Highly Migratory Species Management Team	1 p.m.
Enforcement Consultants	As necessary.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
Thursday, April 5, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Enforcement Consultants	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Enforcement Consultants	As necessary.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
Friday, April 6, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Enforcement Consultants	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 16, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–5145 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020907C]

Marine Mammals; Scientific Research Permit Applications

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

ACTION: Notice; receipt of applications; extension of comment period.

SUMMARY: On February 15, 2007, the NMFS announced receipt of seven applications for permits to conduct research on free-ranging threatened and endangered Steller sea lions (*Eumetopias jubatus*) in California, Washington, Oregon, and Alaska; five applications for permits to conduct research on free-ranging northern fur seals (*Callorhinus ursinus*) in Alaska; and one application for an amendment to a permit for activities with captive Steller sea lions in Alaska. Written comments were due by April 2, 2007. NMFS has decided to allow additional time for submission of public comments on this action.

DATES: The public comment period for this action has been extended from April 2 to April 30, 2007. Written comments must be received or postmarked by April 30, 2007.

ADDRESSES: Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request(s) would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include the appropriate File Number(s) in the subject line of the e-mail comment as a document identifier.

FOR FURTHER INFORMATION CONTACT: Tammy Adams, Amy Sloan, Kate Swails, or Jaclyn Daly, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 15, 2007 (72 FR 7420) NMFS announced receipt of the following applications for permits: 782–1889, 358–1888, 881–1893, 881–1890, 434–1892, 1049–1886, 1034–1887, 715–1883, 715–1884, 715–1885, 1118–1881, 1119–1882, and 881–1745. Summaries of the specific permit applications can be found in the February 15, 2007, **Federal Register** notice and are not repeated here. Specific permit applications are available upon request from the locations provided in the February 15, 2007, **Federal Register** notice and at *http://www.nmfs.noaa.gov/pr/permits/review.htm*.

Dated: March 15, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–5173 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–22–S

UNITED STATES PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Electronic Response to Office Action and Preliminary Amendment Forms.

Form Number(s): PTO Forms 1930, 1957, 1966.

Agency Approval Number: 0651–0050.

Type of Request: Revision of a currently approved collection.

Burden: 25,653 hours annually.

Number of Respondents: 150,900 responses per year.

Avg. Hours per Response: The time needed to respond to the request for reconsideration form is estimated to be 10 minutes (0.17 hours). This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: This collection is being submitted as a proposed addition in support of a notice of proposed rulemaking, ''Changes in the Requirements for Filing Requests for Reconsideration of Final Office Action in Trademark Cases'' (RIN 0651–AC05). The USPTO proposes to amend 37 CFR 2.64 to require a request for reconsideration of an examining attorney's final refusal or requirement to be filed through the Trademark Electronic Application System (TEAS) within three months of the mailing date of the final action.

This rulemaking would add an additional requirement to this collection, a Request for Reconsideration after Final Action (Form 1930). The amendment to 37 CFR 2.64 would streamline and promote efficiency in the process once a final action has issued in an application for Trademark registration. By setting a three-month period in which to file a request for reconsideration of the final action, and by requiring that the request be filed through TEAS, the proposed amendment would facilitate the likely disposition of an applicant's request for reconsideration prior to the six-month deadline for filing an appeal to the Trademark Trial and Appeal Board (TTAB) or petition to the Director on the same final action. This practice may eliminate the need for some appeals or petitions, and reduces the need for remands and transfers of applications on appeal.

The proposed earlier deadline and mandatory TEAS filing facilitate the likely disposition of the request for reconsideration prior to the deadline to petition or appeal. A grant of reconsideration within this timeframe will obviate the need for an applicant to file an appeal or petition, thus also saving the applicant the filing fee for an appeal or petition. A denial of reconsideration within this timeframe will obviate the need for a case on appeal to be remanded and transferred between the TTAB and the examining attorney. Under either scenario, the timeframe in the proposed rule promotes more efficient and prompt handling of the case, and achieves benefits both for the applicant and the USPTO.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0050 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 20, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 15, 2007.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E7–5137 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Final Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement

March 15, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Summary and response to comments concerning the CAFTA-DR commercial availability interim procedures; notice of final procedures.

SUMMARY: This notice summarizes the comments received concerning the Interim Procedures and provides responses to those comments. **See Interim Procedures for Considering Requests Under the Commercial Availability Provision to the Dominican Republic-Central America-United States Free Trade Agreement**, 71 FR 9315 (February 23, 2006).

EFFECTIVE DATE: The date of entry into force of the Dominican-Central America-United States Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA-DR''); the Statement of Administrative Action (''SAA''), accompanying the CAFTA-DR, at 16-20.

Comments and Responses Concerning the Interim Procedures

On February 21, 2006, the Committee for the Implementation of Textile Agreements (''CITA'') issued a **Federal Register** notice advising interested parties of Interim Procedures that CITA would follow in implementing certain provisions of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA-DR Implementation Act''), namely the procedures for modification of the list of fabrics, yarns or fibers not available in commercial quantities in a timely manner in the countries that are Parties to the CAFTA-DR Agreement (''CAFTA-DR'' or ''Agreement''), as set out in Annex 3.25 of the CAFTA-DR. CITA has reviewed and considered all submitted comments, and below is a summary of and response to those comments.

Standards For Submissions: One commentator noted that the interim procedures did not provide a factual standard for determining the substitutability of other products for the product subject to the commercial availability request. **See, e.g.**, sections 4(b)(4) and 6(b)(2)(iv) of the Interim Procedures. CITA has not adopted this suggestion. A wide range of products may be the subject of a commercial availability request. As each commercial availability request is evaluated on the basis of the facts contained therein, it would be impracticable to set forth a uniform standard for substitutability;

rather, CITA will examine each request and any subsequent responses on a case-by-case basis.

The same commentator suggested that an offer made in response to a request must contain an explicit commitment by the potential CAFTA-DR supplier to immediately deliver the product in question or one determined to be substitutable. CITA has not adopted this suggestion. Section 203(o)(4)(C) of the CAFTA-DR Implementation Act sets forth the standard that the subject product be delivered ''in a timely manner.'' What is ''timely'' in any given situation can only be determined on a case-by-case basis.

One commentator asked that CITA clarify that in addition to accepting responses that object to a request, CITA will also accept submissions in support of a request. Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Implementation Act provides for a determination as to whether any ''interested entity has objected to the request.'' Section 6 of the Interim Procedures required that an objection to the request contain an offer to supply, and that both offers to supply and rebuttal submissions provide information to substantiate the claims contained in the respective submissions. This requirement is maintained in section 6 of the Final Procedures. Thus, CITA will not consider submissions in support of a request in making commercial availability determinations.

Removal From Annex 3.25 List: One commentator noted that the procedures should contain an explicit statement that all products already approved under Trade Preference Programs (Caribbean Basin Trade partnership Act (''CBTPA''), African Growth and Opportunity Act (''AGOA''), and the Andean Trade Promotion and Drug Eradication Act (''ATPDEA'') and added to the list in Annex 3.25 of CAFTA-DR cannot be removed from Annex 3.25. A different commentator asked that CITA confirm that products added to the list in Annex 3.25 since the date that the CAFTA-DR was signed cannot be removed from that list. Article 3.25.5(a) of the CAFTA-DR and section 203(o)(4)(E)(I) of the CAFTA-DR Implementation Act provide that fabrics, yarns, or fibers added to the list in Annex 3.25 since the date the CAFTA-DR was signed are subject to removal. Section 9 of Final Procedures accurately reflects these statutory requirements.

Public Notice: One commentator asserted that the procedures' reliance on Internet notification and electronic mail (''email'') correspondence will result in delays or failures to distribute the information fully, especially for small companies relying on outside consultants. Moreover, the commentator stated that forbearing the use of a **Federal Register** notification results in greater risk for parties to be uninformed of developments in these proceedings. Another commentator alleges that as these procedures are a federal administrative process, publication in the **Federal Register** is required so that all parties may be assured of notification. Given the abbreviated timeline for these proceedings, Internet and email communications provide more timely notification than publication in the **Federal Register** and allow all parties equal opportunity for notification. This is particularly relevant for parties outside of the United States. Further, given the abbreviated timeline for such proceedings, Internet and email communications provide interested entities with more time to allocate to reviewing information and providing submissions than **Federal Register** publication would allow. Moreover, although a notice published in the **Federal Register** does constitute ''public notice,'' it is not the only means by which to notify the public. CITA has widely publicized that any interested party may receive its email notifications and that all public documents will be posted on its website. This system provides broad access and accessibility to interested parties inside and outside of the United States.

Another commentator noted that CITA's requirement to submit hard copies of submissions via express courier is too inflexible, and requests that CITA accept hand-delivered submissions accompanied by an appropriate receipt that allows confirmation of delivery. CITA has not adopted this suggestion. In light of the abbreviated timeline for such proceedings, delivery by express courier permits tracking of submissions and avoids the possibility of documents being lost or misplaced.

One commentator asked that CITA accept submissions of electronic information in PDF format. CITA has adopted this suggestion and clarified this point in the Final Procedures.

Other commentators asked that CITA advise interested parties of all deadlines, extensions, availability of samples for public inspection, and the posting of responses on the website in its email notifications. Additional commentators requested that the procedures clarify that information on determinations, including ''Deemed Approvals'' and removal of restrictions will be provided through email notifications, website postings, and publication in the **Federal Register**. CITA has adopted this suggestion and clarified these points in its Final Procedures.

Contents of Requests and Responses: A commentator suggested that requests should include ''offers to buy,'' as responses are required to contain ''offers to supply,'' to prevent speculative and spurious requests by potential buyers. CITA has not adopted this suggestion. CITA has no authority to obligate or compel requesters to purchase products, and therefore, cannot require requesters to include an ''offer to buy.'' However, should a subject or substitutable product be available from a CAFTA-DR supplier, articles containing such products from third-country sources would not qualify for preferential trade benefits.

Another commentator suggested that denials, approvals in restricted quantities, or removals contain contact information of the potential CAFTA-DR supplier(s) of the subject product(s). This information would already be contained in any response with an offer to supply or rebuttal submission. Moreover, as this information is posted on the Internet, there is no need to duplicate such information in CITA's determination notice.

The same commentators suggested that responses with an offer to supply should contain a sample of the petitioned or allegedly substitutable product. CITA is not adopting this suggestion. CITA notes that given the abbreviated timeline to conduct these proceedings and depending on the nature of the requested product, it may not be possible for an interested entity to provide a sample in all situations. Samples may be submitted with requests or offers to supply, but this is not required. CITA notes that in the event that the 14-day extension is invoked, interested entities are provided with additional time to provide a sample product to substantiate their claims should they choose to do so.

A commentator asked that CITA allow discretion regarding treatment of business confidential information in special circumstances, such as when a potential supplier wants to keep its name confidential for fear of retaliation. CITA has not adopted this suggestion. In order to conduct this procedure in an open and fair manner, CITA finds it is necessary for all participants to know: (1) the names of potential suppliers that have been contacted by petitioners, and (2) those interested entities who object to the request. However, specific proprietary information may be treated as business confidential information. **See** section 3 of the Final Procedures.

Restricted Quantities: One commentator was strongly opposed to an automatic review of restricted quantities in a CITA determination, alleging that such reviews would burden parties and CITA with unnecessary processes. Moreover, this commentator claims that the automatic review is not required by the legislation. Section 203(o)(4)(C)(vi) of the CAFTA-DR Implementation Act provides that the restriction may be eliminated not later than six months after the product is added to the list in Annex 3.25 of the Agreement in a restricted quantity. Therefore, CITA may review current circumstances to determine whether eliminating the restricted quantity is warranted. This section of the Final Procedures has been revised to provide clarity. See section 8(c)(3) of the Final Procedures.

One commentator asked that CITA specify how it will determine a given quantity in determinations that involve restricted quantities. In the course of the proceeding, based on the information submitted , CITA will specify an amount that can be provided by the CAFTA-DR supplier(s). CITA will provide additional explanation in a Frequently Asked Questions (''FAQ'') document that will be made available on its website.

Another commentator requests that in section 8(c)(2) of the Interim Procedures, regarding approvals in unrestricted quantities, the language be modified to read, ''... if CITA determines that no CAFTA-DR supplier(s) or manufacturer(s) could fulfill any amount of the request.'' CITA has determined to remove this sentence all together, as it is redundant to the previous sentence.

The same commentator asked that CITA consider eliminating a quantity restriction only upon receipt of a request from an interested entity. CITA has not adopted this suggestion. Section 203(o)(4)(C)(vi) of the CAFTA-DR Implementation Act does not require that a request be submitted to CITA, but only that CITA may remove the restriction within six months after the product is added to the Annex 3.25 list in a restricted quantity.

A commentator asked that CITA clarify that approvals in restricted quantities take effect 30 days after the official receipt of the request. CITA is required to make a determination, whether a denial, approval in an unrestricted quantity, or an approval in a restricted quantity, within the 30 U.S. business-day deadline, with the caveat that CITA may extend the deadline for an additional 14 U.S. business days should additional information be required. See Section 8(c) of the Interim and Final Procedures.

Another commentator asked that CITA specify that the effective date of the elimination of a restriction will be six months after the date of publication of the notice. CITA has not adopted this suggestion. CITA notes that section 203(o)(4)(C)(vi) of the CAFTA-DR Implementation Act does not specify the effective date for removal of the restricted quantity should CITA make such a determination. CITA would publish in the **Federal Register** any modification to products on the Annex 3.25 list, such as removal of a restriction, which in effect adds a product to the Annex 3.25 list in an unrestricted quantity. CITA notes that section 203(o)(4)(C)(v) of the CAFTA-DR Implementation Act specifies that the effective date for adding products to the Annex 3.25 list in an unrestricted or restricted quantity is the date of publication in the **Federal Register**.

A commentator asked that CITA clarify that a review to determine whether to remove restricted quantities can take place later than six months after adding the product in a restricted quantity to the Annex 3.25 list. CITA has not adopted this suggestion. The procedure in section 8(c)(3)(ii) of the Final Procedures implements Section 203(o)(4)(C)(vi) of the CAFTA-DR Implementation Act which provides only for a review not later than six months after the product is added to the Annex 3.25 list in a restricted quantity.

Changed Circumstances: Several commentators requested that CITA clarify a discrepancy in the timeframes provided for reconsideration of determinations in sections 8(c)(6) and 9(a) of the interim procedures. Another commenter requested that CITA strike section 8(c)(6).

In section 8(c)(6) of the Interim Procedures, CITA proposed to allow for proceedings based upon changed circumstances. Several commentators expressed that CITA does not possess statutory authority to conduct changed circumstances proceedings. The Final Procedures clarify when it is appropriate for the agency to conduct a proceeding based upon changed circumstances. It is CITA's intention at this time to exercise its inherent authority to reconsider, and/or subsequently amend, commercial availability determinations that may have been procured by, **e.g.**, error, fraud, or similar faults. **See, e.g., Elkem Metals, et al. v. United States**, 26 C.I.T. 234, 239, 193 F. Supp. 2d 1314, 1319-20 (2002) (''It is indeed the general rule that administrative agencies in general...have the inherent authority to institute reconsideration proceedings so as to 'vindicate the integrity of the administrative process.'''); **Belville Min. Co. v. U.S.**, 999 F.2d 989, 997 (6th Cir. 1993) (''Even where there is no express reconsideration authority for an agency...the general rule is that an agency has inherent authority to reconsider its decision, provided that reconsideration occurs within a reasonable time after the first decision.'')(citations and internal quotations omitted)); **Bookman v. United States**, 197 Ct. Cl. 108, 453 F.2d 1263, 1265 (1972) (explaining the general rule that ''every tribunal, judicial or administrative, has some power to correct its own errors or otherwise modify its judgment, decree, or order'' and that ''[courts] will sustain the reconsidered decision of an agency, as long as the administrative action is conducted within a short and reasonable time'') (citations and internal quotations omitted)); **Gilmore Steel Corp. v. U.S.**, 7 C.I.T. 219, 223, 585 F. Supp. 670, 674 (1984) (holding that the International Trade Administration had the authority to correct a manifest error that ''taints the proceeding''); **Gun South, Inc. v. Brady**, 877 F.2d 858, 862 (11th Cir. 1989) (concluding that the Bureau of Alcohol, Tobacco, and Firearms ''must necessarily retain the power to correct the erroneous approval of firearms import applications'' despite the absence of express statutory authority).

Therefore, the proposed changed circumstances provision was not based on statutory changes made by the CAFTA-DR Implementation Act, but rather relied on the longstanding inherent authority that CITA has always possessed. **See** cases cited **supra**. Further, neither the CAFTA-DR Implementation Act nor case precedent prohibits the proposed proceeding. In the interest of fairness and transparency, however, it seems appropriate to clarify the agency's inherent authority to address such faults in the conduct of the proceeding. In the Final Procedures, CITA has deleted section 8(c)(6) and provided a clarification in the ''Background'' section.

Deadlines: Several commentators noted that the deadlines set forth by the procedures do not allow for extensions for responses with offers to supply or rebuttal comments. The procedures do allow for CITA to extend the time limit for responses with offers to supply and rebuttal comments. However, even if an extension is provided, CITA is required to meet the statutory deadline for making a determination. See sections 6 and 7of the Final Procedures; see also,

e.g., section 203(o)(4)(C)(iv) of the CAFTA-DR Implementation Act.

Another commentator suggested that CITA begin the timeline for the proceeding from the date of publication of the commercial availability request rather than the date of its official receipt by CITA, which would allow for two additional days for submitting responses with offers to supply. CITA has not adopted this suggestion, as CITA needs sufficient time to review the completeness of commercial availability requests before notifying interested parties that a commercial availability request has been submitted and accepted. At the same time, the statute requires that the determination be made within a certain time period from the date of submission. Therefore, in order for CITA to make a commercial availability determination within the statutorily prescribed deadlines, CITA needs the two days in question to review the completeness of the commercial availability request before notifying interested parties that a request has been submitted and accepted. **See** section 203(o)(4)(C)(iv) of the CAFTA-DR Implementation Act.

Another commentator suggested that when CITA seeks to meet with interested entities during an extended review period, the meeting should include all sides of the issue and be open to the public. Should CITA convene a meeting between the requester and interested entities providing offers to supply, such meetings will be public and conducted in an open manner.

A commentator explained that the procedures should state that CITA may determine to extend the 30-day deadline for an additional 14 days to obtain additional information. Section 8 of the Final Procedures explains that CITA is permitted to extend the 30 U.S. business-day deadline for an additional 14 U.S. business days. This same section of the procedures clearly explains the purpose of the 14 U.S. business day extension. See also section 203(o)(4)(c)(iv) of the CAFTA-DR Implementation Act.

Another commentator asked that CITA add in section 8(c)(3)(i) of the Interim Procedures the phrase, ''or not more than 44 U.S. business days where extension is provided...'' CITA has adopted this suggestion in its Final Procedures.

A commentator requested that CITA clarify that if CITA provides an extension for submitting responses with offers to supply, CITA's determinations will still meet the statutory deadline. CITA has adopted this suggestion in its Final Procedures.

One commentator asked that CITA acknowledge that in ''emergency circumstances'' CITA could make a decision prior to its 30 U.S. business-day deadline. CITA has not adopted this suggestion. CITA is required to make a determination ''within'' 30 U.S. business days of receipt of a commercial availability request, unless an extension is provided. See section 203(o)(4)(C)(iv) of the CAFTA-DR Implementation Act. Moreover, each proceeding must allow all interested entities sufficient time to respond with offers to supply and provide rebuttal comments in the course of the proceeding.

Deemed Approval: One commentator objected to the provision regarding ''Deemed Approval,'' noting that such requirements set a negative precedent for future procedures. CITA has not adopted this suggestion. Section 203(o)(4)(D) of the CAFTA-DR Implementation Act provides expressly for the ''Deemed Approval'' procedure.

Another commentator asked that the ''Deemed Approval'' provision apply to all determinations in these proceedings, not only to commercial availability requests to add a given product to Annex 3.25. Section 203(o)(4)(D) of the CAFTA-DR Implementation Act provides that the ''Deemed Approval'' process only applies to commercial availability requests and not to requests to remove or restrict.

Interested Entities: One commentator claimed that CITA inadvertently limited participation in commercial availability proceedings by using the term ''interested entities'' to identify who may request to be included on the email notification list. The Final Procedures clarify that any interested party can be included on the mass email notification list.

Another commentator asked that CITA clarify that trade associations are an ''interested entity.'' CITA has not adopted this suggestion. The term ''interested entity'' is defined in section 203(o)(4)(B)(i) of the CAFTA-DR Implementation Act, and this definition does not include trade associations. However, trade associations can participate in the process as an interested party.

A commentator noted that the language of the procedures differs from the Agreement and the CAFTA-DR Implementation Act, using the standard for determining whether to add a product to the Annex 3.25 list as ''are not available'' instead of ''are available'' in the CAFTA-DR countries. The language of the procedures is consistent with both the Agreement and the CAFTA-DR Implementation Act.

One commentator asked that CITA clarify that non-essential character components are eligible for determinations. The CAFTA-DR Implementation Act provides for determinations whether ''fabrics, yarns, or fibers'' are to be added to the list in Annex 3.25 of the Agreement. See section 203(o)(4)(A). Further, Section Notes 2, 3, and 4 to Section XI of Annex 4.1 of the Agreement provides for how the list of fabrics, yarns, and fibers in Annex 3.25 is taken into account in applying the Agreement's rules of origin. Nothing in the commercial availability process alters the rules of origin contained in the Agreement.

Several commentators asked that CITA elaborate on several of the provisions included in the procedures, including ''Deemed Approval,'' approvals with restricted quantities, the contents of commercial availability requests, responses with offers to supply, and rebuttal comments. CITA has adopted this suggestion and will provide further explanations in a FAQ document to be made available on its website.

Another commentator asked that CITA review its procedures after one year to determine if any modifications are necessary. The Final Procedures provide that the procedures may be modified at any time to address concerns that may arise. CITA notes that these are administrative procedures rather than regulations, and can be modified as needed.

Final Procedures

This notice also sets forth the final procedures the Committee for the Implementation of Textile Agreements (''CITA'') will follow in implementing certain provisions of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA-DR Implementation Act''). Section 203(o)(4) of the CAFTA-DR Implementation Act establishes procedures for the President to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in the countries that are Parties to the CAFTA-DR, as set out in Annex 3.25 of the Agreement. The President has delegated to CITA the authority to determine whether a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in CAFTA-DR countries and has directed CITA to establish procedures that govern the submission of a request and provide the opportunity for interested entities to submit comments and supporting evidence in any such determination pursuant to the CAFTA-DR Implementation Act. This notice

hereby gives notice to interested parties of the procedures CITA will follow in considering such requests.

Background:

The CAFTA-DR provides a list in Annex 3.25 of the Agreement for fabrics, yarns, and fibers that the Parties to the Agreement have determined are not available in commercial quantities in a timely manner from suppliers in the United States or other CAFTA-DR countries. A textile and apparel good containing fabrics, yarns, or fibers that is included in Annex 3.25 of the Agreement may be treated as if it is an originating good for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs, provided that all other fabrics, yarns, or fibers of the component that determines the classification of the good meet the specific rules of origin in Annex 4.1 of the Agreement. The CAFTA-DR Implementation Act provides that the President will establish procedures governing the submission of requests and may determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or the other CAFTA-DR countries. In addition, the CAFTA-DR Implementation Act establishes that the President may remove a fabric, yarn, or fiber from the list, if it has been added to the list in an unrestricted quantity pursuant to section 203(o), if he determines that the fabric, yarn, or fiber has become available in commercial quantities in a timely manner.

The SAA provides that the President will delegate to CITA his authority under section 203(o)(4) of the Agreement (''Commercial Availability Provision''), to establish procedures for modifying the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner for Agreement countries, as set out in Annex 3.25 of the Agreement.

These procedures are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(b)(A) (Administrative Procedures Act). These procedures may be modified in the future to address concerns that may arise as CITA gains experience in implementing them. CITA possesses inherent authority to reconsider, and/or subsequently amend, commercial availability determinations that may have been procured by error, fraud, or similar faults. Should CITA undertake to review a determination under such circumstances, CITA will provide notice to the public, through the email and website notification processes described in the Final Procedures, and provide opportunity for interested entities to submit comments and information for CITA's consideration.

Procedures for Considering Requests

1. Introduction

The intent of the CAFTA-DR Commercial Availability Procedures is to foster the use of U.S. and CAFTA-DR products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. To this end, these procedures are intended to facilitate the transmission, on a timely basis, of order requests and offers to supply such requests; have the market indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and parties, information regarding the requests for products and offers to supply received; ensure wide participation by interested entities and parties; provide careful scrutiny of information provided to substantiate order requests and response to supply offers; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

2. Definitions

(a) Commercial Availability Request. A ''Commercial Availability Request'' is a submission from an interested entity requesting that CITA place a good on the list in Annex 3.25 because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a supplier in the CAFTA-DR countries.

(b) Interested Entity. An ''interested entity'' means a government that is a Party to the Agreement, other than the United States; a potential or actual purchaser of a textile or apparel good; or a potential or actual supplier of a textile or apparel good. CITA recognizes that a legal or other representative may act on behalf of an 'interested entity.' See section 203(o)(4)(B)(i) of the CAFTA-DR Implementation Act.

(c) Interested Party. An ''interested party'' means any interested person that requests to be included on the email notification list for Commercial Availability proceedings. Any interested person may become an interested party by contacting CITA. See Office of Textile and Apparel, U.S. Department of Commerce, website for details at *http://web.ita.doc.gov/tacgi/CABroadcast.nsf/Document?Openform* or send an email to *OTEXACAFTA@ita.doc.gov*.

(d) Official Receipt. The ''official receipt'' is CITA's email confirmation that it has received both the email version and the original submission signed by the interested entity delivered via express courier.

(e) Request. A ''request'' refers to the Commercial Availability Request.

(f) Request to Remove or Restrict. A ''request to remove or restrict'' is a submission from an interested entity, made no sooner than six months after a product has been added to the Annex 3.25 list in an unrestricted quantity pursuant to Section 203(o) of the CAFTA-DR Implementation Act, requesting that CITA either remove a product or that a quantity restriction be introduced.

(g) Requestor. The ''requestor'' refers to the interested entity that files a request, either a Commercial Availability Request or a Request to Remove or Restrict, under the CAFTA-DR Commercial Availability provision, for CITA's consideration.

(h) CAFTA-DR Supplier. A ''CAFTA-DR supplier'' is a potential or actual supplier of a textile or apparel good in the territory of any Party.

(i) Response with an Offer. A ''response with an offer'' is a submission from an interested entity to CITA providing its objection to the request or asserting its ability to supply the subject product by providing an offer to supply the subject product described in the request.

(j) Rebuttal Comment. A ''rebuttal comment'' is a submission from an interested entity providing information in response to evidence or arguments raised in a response with an offer submission. Rebuttal comments must be limited to evidence and arguments provided in a response with an offer submission.

(k) Fiber, Yarn, or Fabric. The term ''fiber, yarn, or fabric'' means a single product or a range of products, which meet the same specifications provided in a submission, and which may be only part of a Harmonized Tariff Schedule of the United States (''HTSUS'') provision.

(l) U.S. Business Day. A ''U.S. business-day'' is any calendar day other than a Saturday, Sunday, or a legal holiday. See section 203(o)(4)(B)(i) of the CAFTA-DR Implementation Act.

3. Submissions for Participation the CAFTA-DR Commercial Availability Proceeding.

*(a) Filing a Submission.*All submissions for a CAFTA-DR Commercial Availability proceeding (e.g., Commercial Availability Request, Response with an Offer, Rebuttal Comments, and Request to Remove or Restrict) must be in English. If any

attachments are in a language other than English, then a translation must be provided. Each submission must be submitted to the U.S. Department of Commerce's Office of Textiles and Apparel (''OTEXA'') in two forms, electronic mail and original signed submission.

(1) An electronic mail (''email'') version of the submission must be either in PDF, Word, or Word-Perfect format and must contain an adequate public summary of any business confidential information and the due diligence certification, sent to **OTEXA__CAFTA@ita.doc.gov**. The ''email'' version of the submission will be posted for public review on OTEXA's CAFTA-DR Commercial Availability website at http:otexa.ita.doc.gov. No business proprietary information should be submitted in the ''email'' version of any document.

(2) The original signed submission must be received via express courier to—Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, DC 20230. Any business confidential information upon which an interested entity wishes to rely must be included in the original signed submission only. Except for the inclusion of business confidential information, the two versions of a submission should be identical.

(3) Brackets must be placed around all business confidential information contained in submissions. Documents containing business confidential information must have a bolded heading stating ''Confidential Version.'' Attachments considered business confidential information must have a heading stating ''Business Confidential Information.'' Documents, including those submitted via ''email,'' provided for public release, must have a bolded heading stating ''Public Version'' and all the business confidential information must be deleted and substituted with asterisks.

(4) Generally, details, such as quantities and lead times for providing the subject product, can be treated as business confidential information. However, the names of suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be included in public versions, which will be made available to the public.

(b) Due Diligence Certification. An interested entity must file a certification of due diligence as described in subsection (b)(1) with each submission, both email and original signed versions, containing factual information. If the interested entity has legal counsel or other representative, the legal counsel or other representative must file a certification of due diligence as described in subsection (b)(2) with each submission, both email and original signed versions, containing factual information. Accurate representations of material facts submitted to CITA for the CAFTA-DR Commercial Availability proceeding are vital to the integrity of this process and are necessary for CITA's effective administration of the statutory scheme. Each submission containing factual information for CITA's consideration must be accompanied by the appropriate certification regarding the accuracy of the factual information. Any submission that lacks the applicable certifications will be considered an incomplete submission that CITA will reject and return to the submitter. CITA may verify any factual information submitted by interested entities in a CAFTA-DR Commercial Availability proceeding.

(1) For the person responsible for presentation of the factual information: I, (name and title), currently employed by (interested entity), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative:I, (name), of (law or other firm), counsel or representative to (interested entity), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

(c) Official Receipt. A submission will be considered officially submitted to CITA only when both the email version and the original signed submission have been received by CITA. For request submissions, CITA will confirm to the requestor that both versions of the request submission were received through an email confirmation. CITA's email confirmation shall be considered the ''official receipt'' of the request submission, and also begins the statutory 30 U.S. business-day process for CITA consideration of requests. CITA will confirm official receipt of response and rebuttal submissions by posting the response or rebuttal on the dedicated website at *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf*.

4. Submitting a Request for Consideration in a Commercial Availability Proceeding.

(a) Commercial Availability Request. An interested entity may submit a Commercial Availability request to CITA alleging that a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a producer in the CAFTA-DR countries.

(b) Contents of a Commercial Availability Request.

(1) Detailed Product Information. The Commercial Availability request must provide a detailed description of the product subject to the request, including, if applicable, fiber content, construction, yarn size, and finishing processes; and the classification of the product under the HTSUS. All measurements in the entire submission must be stated in metric units, or if the English count system is used in any part, then a conversion to metric units must be provided.

(2) Quantity. The Commercial Availability request must provide the specific quantity of the product needed by the requestor, in standard units of quantity for production of the subject product in the CAFTA-DR countries.

3) Due Diligence. The Commercial Availability request must provide a complete description of the due diligence undertaken by the requestor to determine the subject product's availability in the CAFTA-DR countries. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from CAFTA-DR suppliers. The requestor must provide the names and addresses of suppliers contacted, who was specifically contacted, the exact request that was made, the dates of those contacts, whether a sample of the subject product was provided for review, and the exact response given for the supplier's inability to supply the subject product under the same conditions as contained in the Commercial Availability request submitted to CITA, in addition to any other information the requestor believes is relevant. The requestor must submit copies or notes of relevant correspondence, both inquiries and responses, with these

suppliers. Relevant correspondence includes notes of telephone conversations. Specific details of correspondence with suppliers, such as quantities and lead times for providing the subject product, can be treated as business confidential information. However, the names of CAFTA-DR suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. ''Lead times'' refers to supplying the subject product within normal business time frames for the subject product once an order is received. Specific delivery dates are not necessary. Required delivery dates that fall within the time needed to complete the Commercial Availability determination process are not acceptable.

(4) *Substitutable Products.* The Commercial Availability request must provide information on whether the requester believes that other products supplied by the CAFTA-DR supplier are not substitutable in commercial quantities in a timely manner for the product(s) that is (are) the subject of the request for purposes of the intended use. Clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. Describe why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product available from a CAFTA-DR supplier.

(5) *Additional Information.* The Commercial Availability request may provide any additional evidence or information believed to be relevant for CITA to determine whether a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a producer in the CAFTA-DR countries.

5. Consideration and Acceptance of a Request.

In considering whether to accept a request, CITA will consider and determine whether it provides all the required information specified in sections 3 and 4 of these procedures. CITA will determine whether to accept the request for consideration and investigation not later than two U.S. business days after the official receipt of a request.

(a) Request Rejected. If CITA determines that the request does not contain the required information, the requestor will be notified promptly by email that the request has not been accepted and the reasons for the rejection. A request may be resubmitted with additional information for the subject product and CITA will reevaluate it as a new request.

(b) Request Accepted. If CITA determines that the request contains the required information, CITA will notify interested parties by email that a request has been accepted and filed and will assign a File Number. CITA will post the accepted request on its website for public notice. The email notification and the website posting will indicate the calendar date deadlines for submitting offers to supply and submitting rebuttal responses.

6. Submitting a Response with an Offer in a Commercial Availability Proceeding.

Respondents must meet the requirements outlined in 3 of these procedures. General comments in support of or opposition to a commercial availability request do not meet the requirements of a Response with an Offer. A Due Diligence Certification must accompany a Response with an Offer.

(a) Response With an Offer Submission. An interested entity may file a response submission to a request CITA accepted advising CITA of its objection to the request and its ability to supply the subject product by providing an offer to supply the subject product as described in the request. An interested entity will have 10 U.S. business days after official receipt of a request to respond to a request. If good cause is shown, CITA may extend this deadline, but CITA will still meet the statutory deadline for making a determination.

(b) Contents of a Response with an Offer.

(1) *File Number.* The Response with an Offer needs to reference the CITA File Number assigned to the particular Commercial Availability Request being addressed.

(2) *Quantity.* The Response with an Offer must supply the quantity of the requested subject product that the CAFTA-DR supplier, is capable of currently supplying, in standard units of quantity. All measurements must be in metric units. If the English count system is used in any part, then a conversion to metric units must be provided.

(3) *Production Capability.* The Response with an Offer must report the quantity, in metric units, that the CAFTA-DR supplier produced of the subject product, or a substitutable product, in the preceding 24-month period.

(i) For products that have experienced cyclical demand or are not currently produced, the CAFTA-DR supplier should indicate the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(ii) If the requestor has requested a new style, weight, or other variation that is new to the market or new to the respondent, then the CAFTA-DR supplier(s) should provide detailed information on its current ability to make the subject product.

(iii) If the CAFTA-DR supplier(s) are making a new product that has not yet been offered to the market, but could meet the requirements of the subject product, then the CAFTA-DR supplier(s) need(s) to provide detailed information regarding the product and their ability to meet a request.

(iv) *Substitutable Products.* The Response with an Offer may provide, if relevant, the basis for the responder's belief that other products that are supplied by the CAFTA-DR supplier in commercial quantities in a timely manner are substitutable for the product(s) that are the subject of the request for purposes of the intended use.

(4) *Due Diligence.* The Response with an Offer must provide a complete description of the due diligence undertaken by the CAFTA-DR supplier to substantiate the ability to supply the subject product.

(i) In the case of new variations of a product, the CAFTA-DR supplier must substantiate the ability to manufacture the subject product. The CAFTA-DR supplier must provide sufficient detail of the manufacturing capabilities of the facility that will supply the subject product, in addition to any other information the supplier believes is relevant.

(ii) If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(5) Location of the CAFTA-DR supplier. The Response with an Offer must provide the name, address, phone number, and email address of a contact person at the facility claimed to be able to supply the subject product.

7. Submitting Rebuttal Comments.

Rebuttal Comments must meet the requirements outlined in 3 of these procedures. General comments in support of or opposition to a Request or a Response with an Offer do not meet the requirements of a Rebuttal Comment. A *Due Diligence Certification* must accompany a Rebuttal Comment.

(a) Rebuttal Comments. Any interested entity may submit a Rebuttal Comment to a Response with an Offer submission. An interested entity must submit its Rebuttal Comment not later than 4 U.S. business-days after the deadline for Response with an Offer submission. If good cause is shown, CITA may extend the time limit, but CITA will still meet the statutory deadline for making a determination.

(b) Contents of a Rebuttal Comment. The Rebuttal Comment may respond only to evidence or arguments raised in the Response with an Offer submission and must identify the Response with an Offer submission, evidence and/or arguments to which it is responding. The Rebuttal Comment needs to reference the CITA File Number assigned to the particular Commercial Availability Request being addressed.

8. Determination Process.

(a) Not later than 30 U.S. business days after official receipt of a request (or not later than 44 U.S. business days where an extension is provided), CITA will notify interested entities by email and interested parties and the public by a posting on its website whether the subject product is available in commercial quantities in a timely manner in the CAFTA-DR countries and whether an interested entity has objected to the request.

(b) CITA will notify the public of the determination by publication in the **Federal Register** when the determination results in a change to the Commercial Availability List in Annex 3.25 of the Agreement.

(c) *Types of Determinations.*

(1) **Denial.** A denial means that CITA has determined that the subject product is available in commercial quantities in a timely manner in the CAFTA-DR countries. If a request is denied, notice of the denial will be posted on the CAFTA-DR Commercial Availability website at *http://web.ita.doc.gov/tacgi/CABroadcast.nsf/Document?Openform*.

(2) **Approval in Unrestricted Quantity.** An approval in unrestricted quantities means that CITA has determined that the subject product is not available in commercial quantities in a timely manner in the CAFTA-DR countries or that no interested entity has objected to the request.

(i) If a request is approved without restriction, a notice will be published in the U.S. **Federal Register** not later than 30 U.S. business days (or not more than 44 U.S. business days where an extension is provided) after the official receipt of a request, adding the subject product to the Commercial Availability List in Annex 3.25 of the Agreement.

(ii) The effective date of the determination is the date of publication of the notice in the U.S. **Federal Register**.

(3) Approval in a Restricted Quantity.

(i) **Approval in a Restricted Quantity.** An Approval in a Restricted Quantity means that CITA has determined to add the subject product to the Commercial Availability List in Annex 3.25 of the Agreement with a specified restricted quantity. CITA may approve the request in a restricted quantity if CITA determines that a CAFTA-DR supplier(s) can partially fulfill the request for the subject product. The restricted quantity specifies the amount of the subject product that can be provided by a CAFTA-DR supplier(s).

(A) If a request is approved in a restricted quantity, a notice will be published in the **Federal Register** not later than 30 U.S. business days (or not more the 44 U.S. business days where an extension is provided) after official receipt of the request, adding the subject product to the Commercial Availability List in Annex 3.25 of the Agreement with a specified restricted quantity. The restricted quantity specifies the amount of the subject product that can be provided by a CAFTA-DR supplier(s).

(B) The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(ii) **Elimination of a restricted quantity.** Not later than six months after adding a product to the Commercial Availability List in Annex 3.25 of the Agreement in a restricted quantity, CITA may eliminate the restriction if it determines that the subject product is not available in commercial quantities in a timely manner in the CAFTA-DR countries.

(A) The determination that the subject product is not available in commercial quantities in a timely manner will be based upon whether the restricted quantity has been provided by a CAFTA-DR supplier(s). CITA will solicit comments and information from the CAFTA-DR supplier(s) and the requester.

(B) If the CAFTA-DR supplier(s) are still capable of providing the restricted quantity, the restriction will remain.

(C) If the CAFTA-DR supplier(s) are unable to provide the restricted quantity, CITA will eliminate the restricted quantity. CITA will publish a notice in the U.S. **Federal Register**, and post on the website, that the restricted quantity is eliminated and the subject product is added to the Commercial Availability List in Annex 3.25 in an unrestricted quantity. The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(4) Insufficient Information to Determine. CITA will extend its time period for consideration of the Commercial Availability Request by an additional 14 U.S. business days in the event that CITA determines, not later than 30 U.S. business days after official receipt of a Commercial Availability Request, that it has insufficient information to make a determination regarding the ability of a CAFTA-DR supplier to supply the subject products of the Commercial Availability Request based on the submitted information. CITA will normally determine that it does not have sufficient information to make a determination on a Commercial Availability Request when CITA finds there is inconsistency in material information contained in the Commercial Availability Request, one or more Offers to Supply the subject product, and/or the Rebuttal Comments. CITA will notify interested parties via email that it has extended the time period for CITA's consideration by 14 U.S. business-days. CITA also will announce the extension on the website.

(i) *Process during Extension Period.* During the extended time period, CITA will request that interested entities provide additional evidence to substantiate the information provided, and may initiate a meeting with interested entities. Should CITA elect to conduct a meeting, it will comply with

requirements to conduct proceedings in an open manner. Such evidence may include inter alia product samples, lab tests, detailed descriptions of product facilities, and comparisons of product performance in the intended end-use of the subject product. Any samples, if requested, of fibers, yarns, or fabrics, that are provided to CITA will be made available for public inspection at the Office of Textiles and Apparel, Room 3110, U.S. Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, DC 20230. All written submissions must follow instructions described in section 3 of these procedures. Samples should be identified with a cover sheet that describes the specifications of the sample and be identical to the specifications of the request.

(ii) CITA also will consider evidence in support of claims that CAFTA-DR supplier(s) can supply a substantially similar product to that specified in the request.

(iii) CITA will make a determination, not later than 44 U.S. business days after the official receipt of a Commercial Availability Request whether to Approve, Approve with Restriction, or Deny the Commercial Availability Request and will follow the notification process accordingly.

(5) Deemed Approval. In the event that CITA does not make a determination in response to a Commercial Availability Request to add a product to Annex 3.25 of the Agreement within the statutory deadlines provided, not later than 45 U.S. business-days after the official receipt of the commercial availability request or not later than 60 U.S. business-days after the official receipt of the Commercial Availability Request that was determined to lack sufficient information pursuant to subsection (c)(4), the requested subject product shall be added to the Commercial Availability List in Annex 3.25 , in an unrestricted quantity, in accordance with the requirements of section 203(o)(4)(D) of the CAFTA-DR Implementation Act. CITA will notify the public of the Deemed Approval by publication in the U.S. **Federal Register** and posting on OTEXA's website.

9. Six Month Procedures:

(a) *Request to Remove or Restrict.* No earlier than six months after a product has been added to the Commercial Availability List in Annex 3.25 in an unrestricted quantity pursuant to sections 203(o)(2) and (4) of the CAFTA-DR Implementation Act, an interested entity may submit a request to CITA requesting that a product be either removed or that a quantity restriction be introduced.

(b) Content of a Request to Remove or Restrict. The Request to Remove or Restrict must provide the substantive information set forth in subsection 6(b) (Contents of a Response with an Offer) of these procedures.

(c) Procedures.

(1) In considering whether to accept a Request to Remove or Restrict, CITA will follow procedures set forth in section 5 (*Consideration and Acceptance of a Request*) of these procedures.

(2) If CITA determines to accept the Request to Remove or Restrict, CITA and any responding interested entity shall follow applicable procedures and contents set forth in subsections 6(a) (Response Submission) and section 7 (Submitting Rebuttal Evidence) of these procedures.

(3) As set forth in subsections 8(a) and (b) (*Determination Process*) of these procedures, CITA will determine whether the subject product of the Request to Remove or Restrict is available in commercial quantities in a timely manner in the DR-CAFTA countries not later than 30 U.S. business days after the official receipt of the request.

(i) If CITA determines that the product is available in commercial quantities in a timely manner in the DR-CAFTA countries, e.g., that a CAFTA-DR supplier is capable to supply the entire subject product requested originally, then that product will be removed from the Commercial Availability List in Annex 3.25 of the Agreement.

(ii) If CITA determines that the product is available in restricted quantities in a timely manner in the CAFTA-DR countries, e.g., that a CAFTA-DR supplier is capable to supply part of the subject product requested originally then a restricted quantity will be introduced for that product.

(iii) If the Commercial Availability List changes as a result of CITA's determination for the Request to Remove or Restrict, CITA will notify interested parties by email of its determination and will publish a notice of its determination for the request to remove or restrict in the U.S. **Federal Register**.

(A) For removal, the notice will state that textile and apparel articles containing the subject product are not to be treated as originating in a CAFTA-DR country if the subject product is obtained from non-CAFTA-DR sources, effective for goods entered into the United States on or after six months (i.e., 180 calendar days) after the date of publication of the notice.

(B) For restriction, the notice will specify the restricted quantity for the subject product that is to be effective on or after six months (i.e., 180 calendar days) after the publication date of the notice.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–5102 Filed 3–20–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.132A.

Dates: Applications Available: March 21, 2007.

Deadline for Transmittal of Applications: April 20, 2007.

Deadline for Intergovernmental Review: June 19, 2007.

Eligible Applicants: To be eligible to apply, an applicant must—

(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) Have the power and authority to—

(1) carry out the purpose of part C of title VII of the Rehabilitation Act of 1973, as amended (the Act) and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within a State or in a bordering State; and

(2) Receive and administer—

(i) Funds under 34 CFR part 366;

(ii) Funds and contributions from private or public sources that may be used in support of a center for independent living (center); and

(iii) Funds from other public and private programs;

(c) Be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) Either—

(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) Propose to serve one or more of the geographic areas that are identified as unserved or underserved by the State and territories listed under *Estimated Numbers of Awards;* and

(f) Submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or territory whose geographic area or areas the applicant proposes to serve.

Estimated Available Funds: $154,046.

Estimated Number of Awards: 1, distributed in the following manner:

States and territories	Estimated available funds	Estimated number of awards
American Samoa ...	$154,046	1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers that comply with the standards and assurances in section 725 of the Act, consistent with the design included in the State plan for establishing a statewide network of centers.

Program Authority: 29 U.S.C. 796f–1.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 364 and 366.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $154,046.

Estimated Number of Awards: 1, distributed in the following manner:

States and territories	Estimated available funds	Estimated number of awards
American Samoa ...	$154,046	1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to apply, an applicant must—

(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) Have the power and authority to—

(1) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within a State or in a bordering State; and

(2) Receive and administer—

(i) Funds under 34 CFR part 366;

(ii) Funds and contributions from private or public sources that may be used in support of a center; and

(iii) Funds from other public and private programs;

(c) Be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) Either—

(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) Propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and territories listed under *Estimated Number of Awards*; and

(f) Submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or territory whose geographic area or areas the applicant proposes to serve.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: March 21, 2007.

Deadline for Transmittal of Applications: April 20, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Deadline for Intergovernmental Review: June 19, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal

Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Centers for Independent Living program, CFDA Number 84.132A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Centers for Independent Living program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.132, not 84.132A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (*see http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER**

INFORMATION CONTACT and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Thomas Kelley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5055, Potomac Center Plaza, Washington, DC 20202–2800. FAX: (202) 245–7593.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.132A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.132A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.132A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in 34 CFR 366.27.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is comments regarding the application, if any, by the State Independent Living Council in the State or territory in which the applicant is located.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results

Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Centers for Independent Living program is to promote and practice the independent living philosophy of consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center; self-help and self-advocacy; development of peer relationships and peer role models; and the equal access of individuals with significant disabilities to society and to all services, programs, activities, resources, and facilities, whether public or private and regardless of the funding source.

In order to measure the success of one component of meeting this goal, each grantee is required to track the number of individuals who leave nursing homes and other institutions for community-based housing due to independent living services provided by the center. In annual performance reports, centers are required to provide information on the number of individuals requesting this service and the number of individuals who successfully relocated from institutionalized to community-based living.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Thomas Kelley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5055, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7404.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: March 16, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–5166 Filed 3–20–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

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

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE) is forecasting the representative average unit costs of five residential energy sources for the year 2007 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

DATES: *Effective Date:* The representative average unit costs of energy contained in this notice will become effective April 20, 2007 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Bryan D. Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0371, *bryan.berringer@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. (202) 586–7432, *Francine.pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) (42 U.S.C. 6291–6309) requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on February 27, 2006 (71 FR 9806). Effective April 20, 2007, the cost figures published on February 27, 2006, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 2007 representative average unit after-tax costs found in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the February, 2007, EIA *Short-Term Energy Outlook.* (EIA release the Outlook monthly.) The representative average unit after-tax costs for kerosene are derived from their prices relative to that of heating oil, based on 2001–2005 averages for these two fuels. The source for these price data is the January, 2007, *Monthly Energy Review* DOE/EIA–0035(2007/01). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available on the EIA Web site at *http://www.eia.doe.gov.* For more information on the two sources, contact the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

The 2007 representative average unit costs under section 323(b)(4) of the Act are set forth in Table 1, and will become effective April 20, 2007. They will remain in effect until further notice.

Issued in Washington, DC, on March 14, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[2007]

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$31.21	10.65¢/kWh [2 3]	$.1065/kWh
Natural Gas	12.18	$1.218/therm [4] or $12.53/MCF [5 6]	.00001218/Btu
No. 2 Heating Oil	16.01	$2.22/gallon [7]	.00001601/Btu
Propane	20.47	$1.87/gallon [8]	.00002047/Btu
Kerosene	19.48	$2.63/gallon [9]	.00001948/Btu

Sources: U.S. Energy Information Administration, *Short-Term Energy Outlook* (February 2007) and *Monthly Energy Review* (January 2007).
1. Btu stands for British thermal units.
2. kWh stands for kilowatt hour.
3. 1 kWh = 3,412 Btu.
4. 1 therm = 100,000 Btu. Natural gas prices include taxes.
5. MCF stands for 1,000 cubic feet.
6. For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,029 Btu.
7. For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
8. For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
9. For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. E7–5141 Filed 3–20–07; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–416–000; ER07–416–001]

Geneva Roth Holding, LLC; Notice of Issuance of Order

March 15, 2007.

Geneva Roth Holding, LLC (GRH) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. GRH also requested waivers of various Commission regulations. In particular, GRH requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by GRH.

On March 15, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by GRH should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 16, 2007.

Absent a request to be heard in opposition by the deadline above, GRH is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GRH, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of GRH's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5123 Filed 3–20–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–343–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2007.

Take notice that on March 9, 2007, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Tenth Revised Sheet No. 135
Sixth Revised Sheet No. 136
Sixth Revised Sheet No. 138

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5126 Filed 3–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–522–000]

Old Trail Wind Farm, LLC; Notice of Issuance of Order

March 15, 2007.

Old Trail Wind Farm, LLC (Old Trail) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Old Trail also requested waivers of various Commission regulations. In particular, Old Trail requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Old Trail.

On March 15, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Old Trail should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 16, 2007.

Absent a request to be heard in opposition by the deadline above, Old Trail is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Old Trail, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Old Trail's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5124 Filed 3–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–99–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

March 15, 2007.

Take notice that on March 9, 2007, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP07–99–000, an application pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate approximately 14.5 miles of 20-inch diameter pipeline in Woods County, Oklahoma, under Southern Star's blanket certificate issued in Docket No. CP82–479–000, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Southern Star's proposed pipeline would serve as a new natural gas supply lateral (Waynoka Gas Supply Lateral) for Southern Star and its customers. The Waynoka Gas Supply Lateral would enable Southern Star to deliver processed gas originating from Anadarko Petroleum Corporation's (Anadarko) Waynoka Gas Processing Plant to an interconnection to be built on Southern Star's 26-inch diameter Straight Blackwell mainline in Woods County. Southern Star estimates that it would cost $11,200,000 to construct the proposed Waynoka Gas Supply Lateral.

Any questions concerning this application may be directed to David N. Roberts, Manager of Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., P.O. Box 20010, Owensboro, Kentucky 42304, or telephone 270–852–4654.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5122 Filed 3–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 15, 2007.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER98–4652–004.

Applicants: Boralex Stratton Energy, LP.

Description: Boralex Stratton Energy, LP submits FERC Electric Tariff, First Revised Volume 1.

Filed Date: 03/12/2007.

Accession Number: 20070314–0057.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER01–2568–004.

Applicants: Boralex Ashland, LP.

Description: Boralex Ashland, LP submits tariff sheets to FERC Electric Tariff, First Revised Volume 1.

Filed Date: 03/12/2007.

Accession Number: 20070314–0058.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER01–2569–004.

Applicants: Boralex Livermore Falls, LP.

Description: Boralex Livermore Falls, LP submits Revised Original Sheet 1 to FERC Electric Tariff, Revised Original Volume 1 in compliance w/Designation of Electric Rate Schedule Sheets, Order 614.

Filed Date: 03/12/2007.

Accession Number: 20070314–0052.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER02–1175–003.

Applicants: Boralex Fort Fairfield, LP.

Description: Boralex Ft Fairfield, LP submits Revised Original Sheet 1 to FERC Electric Tariff, First Revised Original Volume 1 in compliance w/Designation of Electric Rate Schedule Sheets, Order 614.

Filed Date: 03/12/2007.

Accession Number: 20070314–0053.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER02–2330–046.

Applicants: New England Power Pool.

Description: ISO New England, Inc. submits the eighteenth of the required Standard Market Design Status Report pursuant to the Commission's 9/20/02 Order.

Filed Date: 03/12/2007.

Accession Number: 20070314–0051.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER07–423–001.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Company submits its responses to FERC's 2/9/07 deficiency letter.

Filed Date: 03/12/2007.

Accession Number: 20070314–0059.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER07–606–000.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Indiana, Inc. submits the updated summary schedules for the Transmission and Local Facilities Agreement for the calendar year 2005 w/Wabash Valley Power Association, Inc. etc.

Filed Date: 03/07/2007.

Accession Number: 20070309–0559.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 28, 2007.

Docket Numbers: ER07–615–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a Large Generator Interconnection Agreement among Walnut Creek Energy LLC and California Independent System Operator Corporation.

Filed Date: 03/12/2007.

Accession Number: 20070314–0079.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER07–616–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co. dba Progress Energy Carolinas, Inc. submits an amendment to Large Generator Interconnection Agreement to add Appendix N, a dynamic schedule arrangement etc., effective 2/13/07.

Filed Date: 03/12/2007.

Accession Number: 20070314–0080.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER07–617–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co. dba Progress Energy Carolinas, Inc. requests to amend its Large Generator Interconnection Agreement to add Appendix N etc., with an effective date of 2/13/07.

Filed Date: 03/12/2007.

Accession Number: 20070314–0081.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Docket Numbers: ER07–618–000.

Applicants: American Transmission Systems, Inc.

Description: American Transmission Systems, Inc., acting on its own behalf as well as an agent for Ohio Edison Company submits a Construction Agreement, Open Access Transmission Tariff, Service Agreement 353, effective 2/9/07.

Filed Date: 03/12/2007.

Accession Number: 20070314–0060.

Comment Date: 5 p.m. Eastern Time on Monday, April 02, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5129 Filed 3–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–2232–522]

Duke Energy Carolinas LLC; Notice of Site Visits

March 15, 2007.

Take notice that the following hydroelectric application was filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2232–522.

c. *Dates filed:* August 29, 2006.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Locations:* The Catawba-Wateree Project is located on the Catawba River in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg counties, North Carolina, and on the Catawba and Wateree Rivers in the counties of Chester, Fairfield, Kershaw, Lancaster, and York, South Carolina. There are no federal lands affected by this project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Jeffrey G. Lineberger, Catawba-Wateree Hydro Relicensing Manager; and E. Mark Oakley, Catawba-Wateree Relicensing Project Manager, Duke Energy, Mail Code EC12Y, P.O. Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Sean Murphy at (202) 502–6145 or *sean.murphy@ferc.gov.*

j. *Site Visit:* The Applicant and FERC staff will conduct a series of project site visits beginning at 8 a.m. on March 26, 27, 29, and 30, 2007. All interested individuals, organizations, and agencies are invited to attend. Anyone with questions about the site visits should contact the applicant.

k. This application is not ready for environmental analysis at this time.

l. The existing Catawba-Wateree Project consists of eleven developments:

1. The Bridgewater development consists of the following existing facilities: (1) The Catawba dam consisting of: (a) A 1,650-foot-long, 125-foot-high earth embankment; (b) a 305-foot-long, 120-foot-high concrete gravity ogee spillway; and (c) a 850-foot-long, 125-foot-high earth embankment; (2) the Paddy Creek dam consisting of: a 1,610-foot-long, 165-foot-high earth embankment; (3) the Linville dam consisting of: a 1,325-foot-long, 160-foot-high earth embankment; (4) a 430-foot-long uncontrolled low overflow weir spillway situated between Paddy Creek Dam and Linville Dam; (5) a 6,754 acre reservoir formed by Catawba, Paddy Creek, and Linville with a normal water surface elevation of 1,200 feet above mean-sea-level (msl); (6) a 900-foot-long concrete-lined intake tunnel; (7) a powerhouse containing two vertical Francis-type turbines directly connected to two generators, each rated at 10,000 kilowatts (kW), for a total installed capacity of 20.0 megawatts (MW); and (8) other appurtenances.

2. The Rhodhiss development consists of the following existing facilities: (1) The Rhodhiss dam consisting of: (a) A 119.58-foot-long concrete gravity bulkhead; (b) a 800-foot-long, 72-foot-high concrete gravity ogee spillway; (c) a 122.08-foot-long concrete gravity bulkhead with an additional 8-foot-high floodwall; and (d) a 283.92-foot-long rolled fill earth embankment; (2) a 2,724 acre reservoir with a normal water surface elevation of 995.1 feet above msl; (4) a powerhouse integral to the dam, situated between the bulkhead on the left bank and the ogee spillway section, containing three vertical Francis-type turbines directly connected to three generators, two rated at 12,350 kW, one rated at 8,500 kW for a total installed capacity of 28.4 MW; and (5) other appurtenances.

3. The Oxford development consists of the following existing facilities: (1) The Oxford dam consisting of: (a) A 74.75-foot-long soil nail wall; (b) a 193-foot-long emergency spillway; (c) a 550-foot-long gated concrete gravity spillway; (d) a 112-foot-long embankment wall situated above the powerhouse; and (e) a 429.25-foot-long earth embankment; (2) a 4,072 acre reservoir with a normal water surface elevation of 935 feet above msl; (4) a powerhouse integral to the dam, situated between the gated spillway and the earth embankment, containing two vertical Francis-type turbines directly connected to two generators, each rated at 18,000 kW for a total installed capacity of 35.7 MW; and (5) other appurtenances.

4. The Lookout Shoals development consists of the following existing facilities: (1) The Lookout Shoals dam consisting of: (a) A 282.08-foot-long concrete gravity bulkhead section; (b) a 933-foot-long uncontrolled concrete gravity ogee spillway; (c) a 65-foot-long gravity bulkhead section; and (d) a 1,287-foot-long, 88-foot-high earth embankment; (2) a 1,155 acre reservoir with a normal water surface elevation of 838.1 feet above msl; (3) a powerhouse integral to the dam, situated between the bulkhead on the left bank and the ogee spillway, containing three main vertical Francis-type turbines and two smaller vertical Francis-type turbines directly connected to five generators, three main generators rated at 8,970 kW, and two smaller rated at 450 kW for a total installed capacity of 25.7 MW; and (4) other appurtenances.

5. The Cowans Ford development consists of the following existing facilities: (1) The Cowans Ford dam consisting of: (a) A 3,535-foot-long embankment; (b) a 209.5-foot-long gravity bulkhead; (c) a 465-foot-long concrete ogee spillway with eleven Taintor gates, each 35-feet-wide by 25-feet-high; (d) a 276-foot-long bulkhead; and (e) a 3,924-foot-long earth embankment; (2) a 3,134-foot-long saddle dam (Hicks Crossroads); (3) a 32,339 acre reservoir with a normal water surface elevation of 760 feet above msl; (4) a powerhouse integral to the dam, situated between the spillway and the bulkhead near the right embankment, containing four vertical Kaplan-type turbines directly connected to four generators rated at 83,125 kW for a total installed capacity of 332.5 MW; and (5) other appurtenances.

6. The Mountain Island development consists of the following existing facilities: (1) The Mountain Island dam consisting of: (a) A 997-foot-long, 97-foot-high uncontrolled concrete gravity ogee spillway; (b) a 259-foot-long bulkhead on the left side of the powerhouse; (c) a 200-foot-long bulkhead on the right side of the powerhouse; (d) a 75-foot-long concrete core wall; and (e) a 670-foot-long, 140-

foot-high earth embankment; (2) a 3,117 acre reservoir with a normal water surface elevation of 647.5 feet above msl; (3) a powerhouse integral to the dam, situated between the two bulkheads, containing four vertical Francis-type turbines directly connected to four generators rated at 15,000 kW for a total installed capacity of 55.1 MW; and (4) other appurtenances.

7. The Wylie development consists of the following existing facilities: (1) The Wylie dam consisting of: (a) A 234-foot-long bulkhead; (b) a 790.92-foot-long ogee spillway section that contains 2 controlled sections with a total of eleven Stoney gates, each 45-feet-wide by 30-feet-high, separated by an uncontrolled section with no gates; (c) a 400.92-foot-long bulkhead; and (d) a 1,595-foot-long earth embankment; (2) a 12,177 acre reservoir with a normal water surface elevation of 569.4 feet above msl; (3) a powerhouse integral to the dam, situated between the bulkhead and the spillway near the left bank, containing four vertical Francis-type turbines directly connected to four generators rated at 18,000 kW for a total installed capacity of 69 MW; and (4) other appurtenances.

8. The Fishing Creek development consists of the following existing facilities: (1) The Fishing Creek dam consisting of: (a) A 114-foot-long, 97-foot-high uncontrolled concrete ogee spillway; (b) a 1,210-foot-long concrete gravity, ogee spillway with twenty-two Stoney gates, each 45-feet-wide by 25-feet-high; and (c) a 214-foot-long concrete gravity bulkhead structure; (2) a 3,431 acre reservoir with a normal water surface elevation of 417.2 feet above msl; (3) a powerhouse integral to the dam, situated between the gated spillway and the bulkhead structure near the right bank, containing five vertical Francis-type turbines directly connected to five generators two rated at 10,530 kW and three rated at 9,450 kW for a total installed capacity of 48.1 MW; and (4) other appurtenances.

9. The Great Falls-Dearborn development consists of the following existing facilities: (1) The Great Falls diversion dam consisting of a 1,559-foot-long concrete section; (2) the Dearborn dam consisting of: (a) A 160-foot-long, 103-foot-high concrete embankment; (b) a 150-foot-long, 103-foot-high intake and bulkhead section; and (c) a 75-foot-long, 103-foot-high bulkhead section; (3) the Great Falls dam consisting of: (a) a 675-foot-long 103-foot-high concrete embankment situated in front of the Great Falls powerhouse (and joined to the Dearborn dam embankment); and (b) a 250-foot-long intake section (within the embankment); (4) the Great Falls bypassed spillway and headworks section consisting of: (a) a 446.7-foot-long short concrete bypassed reach uncontrolled spillway with a gated trashway (main spillway); (b) a 583.5-foot-long concrete headworks uncontrolled spillway with 4-foot-high flashboards (canal spillway); and (c) a 262-foot-long concrete headworks section situated perpendicular to the main spillway and the canal spillway, containing ten opening, each 16-feet-wide; (5) a 353 acre reservoir with a normal water surface elevation of 355.8 feet above msl; (6) two powerhouses separated by a retaining wall, consisting of: (a) Great Falls powerhouse: containing eight horizontal Francis-type turbines directly connected to eight generators rated at 3,000 kW for an installed capacity of 24.0 MW, and (b) Dearborn powerhouse: containing three vertical Francis-type turbines directly connected to three generators rated at 15,000 kW for an installed capacity of 42.0 MW, for a total installed capacity of 66.0 MW; and (7) other appurtenances.

10. The Rocky Creek-Cedar Creek development consists of the following existing facilities: (1) A U-shaped concrete gravity overflow spillway with (a) A 130-foot-long section (on the east side) that forms a forebay canal to the Cedar Creek powerhouse and contains two Stoney gate, each 45-feet-wide by 25-feet-high; (b) a 1,025-foot-long, 69-foot-high concrete gravity overflow spillway; and (c) a 213-foot-long section (on the west side) that forms the upper end of the forebay canal for the Rocky Creek powerhouse; (2) a 450-foot-long concrete gravity bulkhead section that completes the lower end of the Rocky Creek forebay canal; (3) a 748 acre reservoir with a normal water surface elevation of 284.4 feet above msl; (4) two powerhouses consisting of: (a) Cedar Creek powerhouse (on the east): containing three vertical Francis-type turbines directly connected to three generators, one rated at 15,000 kW, and two rated at 18,000 kW for an installed capacity of 43.0 MW; and (b) Rocky Creek powerhouse (on the west): containing eight horizontal twin-runner Francis-type turbines directly connected to eight generators, six rated at 3,000 kW and two rated at 4,500 kW for an installed capacity of 25.8 MW, for a total installed capacity of 68.8 MW; and (5) other appurtenances.

11. The Wateree development consists of the following existing facilities: (1) The Wateree dam consisting of: (a) A 1,450 foot-long uncontrolled concrete gravity ogee spillway; and (b) a 1,370-foot-long earth embankment; (2) a 13,025 acre reservoir with a normal water surface elevation of 225.5 feet above msl; (3) a powerhouse integral to the dam, situated between the spillway and the earth embankment, containing five vertical Francis-type turbines directly connected to five generators, two rated at 17,100 kW and three rated at 18,050 kW for a total installed capacity of 82.0 MW; and (4) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process: The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff has previously noticed a series of scoping meetings, one agency scoping meeting and three public meetings. The agency scoping meeting, Wednesday March 28, 2007, in Rock Hill NC, will focus on resource agency and non-governmental organization (NGO) concerns. The public scoping meetings on March 26, 27, 28, and 29, 2007 will provide a means for public input. All interested individuals, organizations, and agencies are invited to attend one or more of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS.

Copies of the SD1 outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link.

Site Visits

All site visits are scheduled to start at 8 a.m. sharp. Contact the applicant for directions.

Monday, March 26, 2007.
Meeting Location: The Bridgewater Development Powerhouse.
Reservoirs scheduled to visit: Lake James, Lake Rhodhiss and one location on Lake Hickory.

Tuesday, March 27, 2007.
Meeting Location: The Oxford Development Powerhouse.
Reservoirs scheduled to visit: Lake Hickory, Lookout Shoals Lake, and Lake Norman.

Thursday, March 28, 2007.
Meeting Location: Fishing Creek Development Powerhouse.
Reservoirs scheduled to visit: Greatfalls Reservoir and Lake Wateree.

Friday, March 29, 2007.
Meeting Location: Fishing Creek Development Powerhouse.
Reservoirs scheduled to visit: Fishing Creek Lake and Lake Wylie.

Objectives

At the site visits, the staff will be concentrating on viewing project aspects that are difficult to understand without viewing the area, or have been raised as significant issues.

Procedures

People attending the site visits need to supply their own transportation (carpooling is recommended), wear clothes suitable for being outside in the elements, wear closed toed shoes, bring or be prepared to buy lunch as a meal will not be provided. Please note that the distances are long and time is short, if you are late for the start time you risk being left behind.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5125 Filed 3–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing Guidelines for CPA Certification Statements, Annual Stockholders Reports, FERC–730 and FERC–61

March 15, 2007.

CPA Certification Statements, Docket No. ZZ07–1–000 ; Annual Stockholders Reports, Docket No. ZZ07–2–000; FERC–730 Reports of Transmission Investment Activity; Docket No. ZZ07–3–000; FERC–61 Narrative Description of Service Company Functions; Docket No. HC07–7–000.

Take notice that the Commission is issuing electronic filing guidelines for submission of:

(1) CPA Certification Statements for FERC Form Nos. 1, 1–F, 2, and 2–A filed pursuant to 18 CFR 41.10–41.12 and 18 CFR 158.10–158.12. These Certification Statements will be filed under Docket No. ZZ07–1–000.

(2) Annual Stockholders Reports filed in conjunction with FERC Form Nos. 1, 2, 2–A and 6. These Reports will all be filed under Docket No. ZZ07–2–000.

(3) FERC–730, Reports of Transmission Investment Activity, filed pursuant to 18 CFR 35.35(h). These Reports will all be filed under Docket No. ZZ07–3–000.

(4) FERC–61, Narrative Description of Service Company Functions, filed pursuant to 18 CFR 366.23(a)(2). These Narrative Descriptions will all be filed under Docket HC07–7–000.

The electronic filing guidelines are attached to this notice and will available on the Commission's Web site at: *http://www.ferc.gov/help/how-to.asp.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5127 Filed 3–20–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0861; FRL–8115–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Compliance Requirement for Child-Resistant Packaging; EPA ICR No. 0616.09, OMB Control No. 2070–0052

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Compliance Requirement for Child-Resistant Packaging'' and identified by EPA ICR No. 0616.09 and OMB Control No. 2070–0052, is scheduled to expire on August 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before May 21, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0861, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0861. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available

in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9072; fax number: (703) 305–5884; e-mail address: *hogue.joe@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. 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 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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. 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 and provide specific examples.

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 identified under **DATES**.

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.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are registrants of pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The North American Industrial Classification System (NAICS) code for respondents under this ICR is 325320 (pesticides and other agricultural chemical manufacturing).

Title: Compliance Requirement for Child-Resistant Packaging.

ICR numbers: EPA ICR No. 0616.09, OMB Control No. 2070–0052.

ICR status: This ICR is currently scheduled to expire on August 31, 2007. 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** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection program is designed to provide EPA with assurances that the packaging of pesticide products sold and distributed to the general public in the United States meets standards set forth by the Agency pursuant to FIFRA, and is thereby protective of children. Registrants must certify to the Agency that the packaging or device meets these standards. There are no forms associated with this information collection activity.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.9 hours per response. EPA estimates that 703 responses will be received per year for a total annual burden of 3,473 hours, at a cost of $193,567. 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 which have subsequently changed; 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 here:

Estimated total number of potential respondents: 703 per year.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 3,473 hours.

Estimated total annual costs: $193,567. This cost is entirely from the burden hours. No costs are expected for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is no change in the number of respondents (703 per year) projected to participate in the program over the next three years. However, the total burden hours per respondent for compliance with the child-resistant packaging (CRP) requirements increased from 3 hours to 4.9 hours at a total cost of about $275 per response. The estimated annual

burden under the last ICR approval was 2,109 hours. Under this ICR renewal, the annual burden is estimated to be 3,473 hours. The increased burden of 1,364 hours represents an adjustment to the burden estimate.

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 12, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–4925 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8290–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq*). 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.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1788.08; NESHAP for Oil and Natural Gas Production (Final Rule); in 40 CFR part 63, subpart HH; was approved 02/27/2007; OMB Number 2060–0417; expires 02/28/2010.

EPA ICR No. 2050.03; NESHAP for Taconite Iron Ore Processing (Renewal); in 40 CFR part 63, subpart RRRRR; was approved 02/21/2007; OMB Number 2060–0538; expires 02/28/2010.

EPA ICR No. 0029.09; NPDES Modification and Variance Requests; in 40 CFR 122.62–64, 40 CFR 122.21(m)(1–2 & 4–6), 40 CFR 122.21(n)(1 & 3), 40 CFR 122.41(l)(1, 3, 8), 40 CFR 501.15(b)(8, 12), 40 CFR 122.24(l)(2, 8), 40 CFR 122.42(a)(1–2), 40 122.47(b)(4), 40 CFR 122.41(h), 40 CFR 124.53–124.54, 40 CFR 501.15(c)(2), 40 CFR 125.30, and 40 CFR 122.29(b); was approved 02/21/2007; OMB number 2040–0068; expires 02/28/2010.

EPA ICR No. 1803.05; Drinking Water State Revolving Fund Program; in 40 CFR part 35, subpart L; was approved 02/21/2007; OMB Number 2040–0185; expires 02/28/2010.

EPA ICR No. 0168.09; NPDES and Sewage Sludge Management State Programs; in 40 CFR 122, 40 CFR 123.21–123.24, 40 CFR 123.26–123.29, 40 CFR 123.43–123.45 40 CFR 123.62–123.64, 40 CFR 124.53–124.54, 40 CFR 125, 40 CFR 501, 40 CFR 123.68(e), 40 CFR 123.68(e)(5), 40 CFR 123.41(a), 40 CFR 501.21, 40 CFR 501.34, 40 CFR 501.11, 40 CFR 501.16, 40 CFR 123.26(b)(2)&(3), 40 CFR 124.53–124.54, 40 CFR 123.43–123.44, 40 CFR 501.14; was approved 02/21/2007; OMB Number 2040–0057; expires 02/28/2010.

EPA ICR No. 1772.04; Information Collection Activities Associated with EPA's ENERGY STAR Program in the Commercial and Industrial Sectors (Renewal); was approved 02/26/07; OMB Number 2060–0347; expires 02/28/2010.

EPA ICR No. 0783.52; Cold Temperature Hydrocarbon Emissions Standards For Light-Duty Vehicles, Light-Duty Trucks, and Medium-Duty Passenger Vehicles (Final Rule); in 40 CFR part 85, subparts R, S, T, V, W, and Y; 40 CFR part 86, subparts B, E, F, G, H, J, K, L, O, P, R, and S; and 40 CFR part 600, subparts A, B, D, and F; was approved 02/26/2007; OMB Number 2060–0014; expires 11/30/2008.

EPA ICR No. 1696.05; Fuels and Fuel Additives: Health-Effects Research Protocols (Renewal); in 40 CFR part 79, subpart F; was approved 02/08/2007; OMB Number 2060–0297; expires 02/28/2010.

EPA ICR No. 1665.07; Confidentiality Rules (Renewal); in 40 CFR part 2, subparts A, B; was approved 02/14/2007; OMB Number 2020–0003; expires 02/28/2010.

EPA ICR No. 2046.03; NESHAP for Mercury Cell Chlor-Alkai Plants (Renewal); in 40 CFR part 63, subpart IIIII; was approved 02/13/2007; OMB Number 2060–0542; expires 02/28/2010.

EPA ICR No. 2062.03; NESHAP for Site Remediation (Renewal); in 40 CFR part 63, subpart GGGGG; was approved 02/13/2007; OMB Number 2060–0534; expires 02/28/2010.

EPA ICR No. 2231.01; Information Collection Request for Contaminant Occurrence Data in Support of EPA's Second Six-Year Review of National Primary Drinking Water Regulations; was approved 02/21/2007; OMB Number 2040–0275; expires 02/28/2010.

EPA ICR No. 0220.10; Clean Water Act Section 404 State-Assumed Programs; in 40 CFR 233.10–14, 40 CFR 233.20–21, 40 CFR 233.30, 40 CFR 233.50, 40 CFR 233.52; was approved 02/21/2007; OMB Number 2040–0168; expires 02/28/2010.

EPA ICR No. 2060.02; Cooling Water Intake Structures Phase II Existing Facility (Final Rule); in 40 CFR 122.21(d)(2), 40 CFR 122.21(r)(2,3,5), 40 CFR 122.21(r)(2)(i–iii), 40 CFR 122.21(r)(3)(i–v), 40 CFR 122.21(r)(5)(i–ii), 40 CFR 125.94–125.98; was approved 02/20/2007; OMB Number 2040–0257; expires 05/31/2007.

EPA ICR No. 2228.02; Reformulated Gasoline Commingling Provisions (Renewal); in 40 CFR 80.78; was approved 03/06/2007; OMB Number 2060–0587; expires 03/31/2010.

EPA ICR No. 1060.14; NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (Renewal); in 40 CFR part 60, subparts AA and AAa; was approved 03/06/2007; OMB Number 2060–0038; expires 03/31/2010.

EPA ICR No. 1381.08; Recordkeeping and Reporting Requirements for Solid Waste Disposal Facilities and Practices; in 40 CFR 258.10–258.16, 40 CFR 258.20–258.23; 40 CFR 258.28 and 258.29; was approved 3/7/2007; OMB Number 2050–0122; expires 03/31/2010.

EPA ICR No. 2223.01; Residential and Commercial Awareness and Use of Rodenticides in Southern California Urban Ecosystems; was approved 02/08/2007; OMB Number 2080–0077; expires 02/28/2010.

Comment Filed

EPA ICR No. 1189.18; F019 Listing Amendment (Proposed Rule); OMB filed comment on 02/26/2007.

Dated: March 13, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–5160 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8289–8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Public Service Company, Fort Saint Vrain Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has partially granted and partially denied the August 6, 2005 petition, submitted by Jeremy Nichols (Petitioner), to object to the July 1, 2005 operating permit issued to Public Service Company, Fort Saint Vrain Station (Ft. St. Vrain).

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioners may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final order, the petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for Public Service Company, Fort Saint Vrain Station is available electronically at: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/fort_st_vrain_decision2005.pdf*.

FOR FURTHER INFORMATION CONTACT: Donald Law, Office of Partnerships and Regulatory Assistance, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7015, *law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On August 6, 2005, the EPA received a petition from Jeremy Nichols requesting that EPA object to the issuance of the Title V operating permit to the Public Service Company, Fort Saint Vrain Station for the following reasons: (I) The operating permit fails to require appropriate best available control technology for NO_X emissions; (II) the operating permit fails to ensure compliance with NO_X concentration limits and/or fails to adopt enforceable limits; (III) the operating permit fails to subject T004 in simple cycle mode to Compliance Assurance Monitoring (CAM) requirements for NO_X emissions; (IV) the operating permit fails to require opacity monitoring; (V) the operating permit sets unenforceable CO emission limits and/or fails to ensure compliance with CO limits; and (VI) concerns on eight specific permit conditions.

On February 5, 2007, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion to partially grant and partially deny the petition for objection.

Dated: February 28, 2007.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. E7–5163 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0152; FRL–8117–4]

Notice of Filing of Pesticide Petitions for the Exemption from Tolerances for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for the exemption from tolerances for the residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 20, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting 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.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP number	Docket ID number
PP 6E7118 Aspergillus flavus AF36	EPA-HQ-OPP-2007-0158
PP 6F7111 Bacillus firmus strain I-1582	EPA-HQ-OPP-2007-0159
PP 6F7121 Aspergillus flavus NRRL 21882	EPA-HQ-OPP-2007-0160

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Exemption from Tolerance

PP 6F7111. (EPA–HQ–OPP–2007–0159). AgroGreen, Biological Division, Minrav Infrastructures (1993) Ltd., 3 Habossem St., P.O. Box 153, Ashdod 77101, Israel, (petition submitted by RegWest Company, LLC, 30856 Rocky Road, Greeley, CO 80631-9375), proposes to establish an exemption from

the requirement of a tolerance for residues of the microbial pesticide, *Bacillus firmus* strain l-1582, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Shanaz Bacchus, telephone number: (703) 308-8097; e-mail address: *bacchus.shanaz@epa.gov*.

Amendments to Existing Exemptions from Tolerance

1. *PP 6E7118*. (EPA–HQ–OPP–2007–0158). Interregional Research Project Number 4 (IR-4), Rutgers University, 500 College Road East, Suite 201W, Princeton, NJ 08540 on behalf of the Arizona Cotton Research and Protection Council, 3721 East Weir Avenue Phoenix, Arizona 85040-2933, proposes to amend the exemptions from tolerances in 40 CFR 180.1206 for residues of the microbial pesticide *Aspergillus flavus* AF36, in or on the food commodities pistachio. Because this petition is a request for a temporary exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. The temporary exemption from tolerance will expire with the expiration of the EUP (EPA Registration Number 71693-EUP-R) on pistachio. Contact: Shanaz Bacchus, telephone number: (703) 308-8097; e-mail address: *bacchus.shanaz@epa.gov*.

2. *PP 6F7121*. (EPA–HQ–OPP–2007–0160). The Acta Group, 1203 Nineteenth St., NW., Suite 300, Washington D.C. 20036-2401 on behalf of Circle One Global, Inc., P.O. Box 28, Shellman, GA 39886-0028, proposes to amend the exemptions from tolerances in 40 CFR 180.1254 for residues of the microbial pesticide *Aspergillus flavus* NRRL 21882, in or on the food commodity corn. Because this petition is a request for a temporary exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. The temporary exemption from tolerance will expire with the expiration of the EUP (EPA Registration Number 75624-EUP-E) on corn. Contact: Shanaz Bacchus, telephone number: (703) 308-8097; e-mail address: *bacchus.shanaz@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 8, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–4933 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0144; FRL–8118–1]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 524–EUP–R from Monsanto Company requesting an experimental use permit (EUP) for the insect-protected soybean MON 87701. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before April 20, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0144 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0144. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mika J. Hunter, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 308–0041; e-mail address: *hunter.mika@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in agricultural biotechnology or those who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting 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.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

Monsanto Company has developed an insect-protected soybean, MON 87701, that produces the Cry1Ac protein to provide protection from feeding damage from certain lepidopteran pests. The 524–EUP–R application is for 56.0 acres of MON 87701 for the 2007 growing season. This insect-protected soybean product has a limited fit in the United States since only a small portion of the United States soybean production acres are significantly and consistently affected by the target lepidopteran pests. The purpose of growing MON 87701 in the United States is to evaluate and further develop the product in support of a planned commercialization in South America. A total of five trial protocols will be conducted, including: Agronomic yield trials, breeding and observation nursery trials, regulatory trials, efficacy trials, and product development trials. States involved include: Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virginia.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 8, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–5027 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0040; FRL–8112–3]

Pesticides; Guidance for Pesticide Registrants on Disposal Instructions on Non-Antimicrobial Residential/Household Use Pesticide Product Labels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) entitled ''Disposal Instructions on Non-Antimicrobial Residential/Household Use Pesticide Product Labels.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR Notice provides guidance to the registrant concerning the updating and revision of PR Notice 2001-6 to clarify that the use of a toll free number in the disposal instructions on non-antimicrobial residential/household use pesticide product labels is optional. If registrants choose to change or remove a toll free number from the disposal instructions on their label, this notice provides guidance on making such changes.

FOR FURTHER INFORMATION CONTACT: Jim Downing, Biopesticides and Pollution Prevention Division, (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9071; fax number: (703) 308-7026; e-mail address: *downing.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however this action may be of particular interest to those persons who are responsible for registration and reregistration of pesticide products. Since other entities may also be

interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the 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 a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0040. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

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*.

II. What Guidance Does this PR Notice Provide?

This PR Notice provides guidance to the registrant updating and revising PR Notice 2001-6 to clarify that the use of a toll free number in the disposal instructions on non-antimicrobial residential/household use pesticide product labels is optional. If registrants choose to change or remove a toll free number from the disposal instructions on their label, this notice provides guidance on making such changes. This notice supersedes PR Notice 2001-6 in its entirety and PR Notices 83-3 and 84-1 in part.

This notice provides guidance for the development of disposal instructions for non-antimicrobial, residential/household use pesticide product labels. EPA is providing instructions that direct consumers to call their local authorities for specific disposal instructions in order to provide state and local governments greater latitude in carrying out their responsibilities for product disposal and waste management programs.

This notice is directed to registrants of non-antimicrobial, residential/household use products. Registrants using the revised disposal statements provided in this notice may add the disposal statements to their labels by notification or they may make the changes with non-notification, according to PR Notice 98-10. The Agency expects that registrants of existing products will begin to revise their labels accordingly. All affected product labels were expected to have disposal statements according to issued guidance by October 1, 2003. The statements in this notice are not intended for non-residential/non-household use (e.g., agricultural, commercial, or industrial use) pesticide products where users generally have access to established recycling and/or disposal procedures and programs.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 2, 2007.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 07–1291 Filed 3–20–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Public Hearing; Issuance of Interpretation 7, Items Held for Remanufacture; and Meeting Schedule for 2007 and 2008

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will hold a public hearing in conjunction with its May 23–24, 2007 Board Meeting to hear testimony about the Preliminary Views document, *Accounting for Social Insurance, Revised*. The public hearing will be held in room *1N37* of the GAO Building. The hearing will permit the Board to ask questions about information and points of view submitted by respondents. Those interested in testifying should contact Richard Fontenrose, Assistant Director, no later than one week prior to the hearing. Mr. Fontenrose can be reached at 202–512–7358 or via e-mail at *fontenroser@fasab.gov*. Respondents should, at the same time, provide a short biography and written copies of their testimony. The Preliminary Views document, issued in October 2006, is available on the FASAB Web site *http://www.fasab.gov* under ''Exposure Drafts.'' Comments on the document are requested by April 16, 2007. Also, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued interpretation 7, *Items Held for Remanufacture*. Copies of the interpretation can be obtained by contacting FASAB at 202–512–7350. The interpretation is also available on FASAB's home *www.fasab.gov.* Additionally, the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in Room 7C13 of the U.S. Government Accountability Office (GAO) Building (441 G Street, NW) unless otherwise noted:

2007 Meetings

—Wednesday, May 23, 2007 *(Room 1N37)*.
—Thursday, May 24, 2007.
—Wednesday and Thursday, July 25 and 26, 2007.
—Wednesday and Thursday, September 19 and 20, 2007.
—*Tuesday and Wednesday, December 4 and 5, 2007.
*(Rescheduled from November 14 and 15).

2008 Meetings

—Wednesday and Thursday, February 13 and 14, 2008.
—Wednesday and Thursday, April 16 and 17, 2008.
—Wednesday and Thursday, June 18 and 19, 2008.
—Wednesday and Thursday, August 20 and 21, 2008.
—Wednesday and Thursday, October 22 and 23, 2008.
—Wednesday and Thursday, December 17 and 18, 2008.

The purposes of the meetings will be to discuss issues related to:

—FASAB's conceptual framework,
—Stewardship Reporting,
—Social Insurance,
—Natural Resources,
—Inter-entity Costs,
—Fiduciary Activities,
—Technical Agenda, and
—Any other topics as needed.

A more detailed agenda will be available at the FASAB Web site (*http://www.fasab.gov*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

For Further Information Contact: Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: March 16, 2007.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 07–1383 Filed 3–20–07; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 9, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 21, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503 or via Internet at *Allison_E._Zaleski@omb.eop.gov* or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 76.41, Franchise Application Process.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: State, local or tribal government.

Number of Respondents: 5,006.

Estimated Time per Response: 0.5 hours–4 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 46,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Needs and Uses: The Commission has assessed the effects of the application filing requirements used to calculate the time frame in which a local franchising authority shall make a decision, and find that those requirements will benefit companies with fewer than 25 employees by providing such companies with specific application requirements of a reasonable length. We anticipate this specificity will streamline this process for companies with fewer than 25 employees, and that these requirements will not burden these companies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–5069 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

March 13, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 20, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via internet at *Allison_E._Zaleski@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a

copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0895.

Title: Numbering Resource Optimization, CC Docket No. 99–200 (47 CFR 52.15, Central Office Code Administration).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,780 respondents; 7,385 responses.

Estimated Time Per Response: 1–44.4 hours.

Frequency of Response: On occasion and semi-annual reporting requirements and recordkeeping requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 131,782 hours.

Total Annual Cost: $3,462,800.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Disaggregated, carrier specific forecast and utilization data will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4) of the Privacy Act.

Needs and Uses: The Commission will submit this information collection to OMB as a revision during this comment period to obtain the full three-year clearance from them.

The Commission has revised the burden hours and annual cost since this was last submitted to OMB.

For this submission to OMB, the Commission is eliminating a one-time reporting requirement that carriers submit cost support data so that the Commission could determine the cost associated with the thousand-block number pooling. Carriers were required to include an analysis of the differences between the shared industry costs associated with the thousand-block number pooling and the shared industry costs, if any, associated with the current practices that resulted in more frequent area code changes. Because the Commission is revising this collection to eliminate this one-time requirement, we are reporting a −50,108 hourly burden reduction. The Commission is also reporting a −$4,396,200 reduction in annual costs due to an adjustment because industry burden costs have been re-estimated for contract years 2–4 for wages.

The data from this information collection is used by the FCC, state regulatory commissions, and the North American Numbering Plan Administrator (NANPA) to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and North American Numbering Plan (NANP) exhaust.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–5168 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–262, 94–1, 99–249, 96–45; DA 07–1001]

Reconsideration of CALLS Order

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document requests that parties that filed petitions for reconsideration of a 2000 Commission order adopting rules applicable to price cap local exchange carriers file supplemental notices indicating whether they wish to pursue any issues in those petitions. Subsequent court decisions and Commission actions may have mooted the issues in those petitions for reconsideration.

DATES: Supplemental notices due April 20, 2007, and comments due May 7, 2007.

ADDRESSES: Filings should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Victoria Goldberg, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, *jennifer.mckee@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commission's rules governing petitions for reconsideration, 47 CFR 1.106, the Wireline Competition Bureau (the Bureau) invites interested parties to update the record pertaining to petitions for reconsideration filed with respect to the *CALLS Order*, 65 FR 38684, June 21, 2000.

After the Commission released the *CALLS Order* on May 31, 2000, four parties filed petitions for reconsideration of that order. These petitions were filed by the Association for Local Telecommunications Services (ALTS) and Focal Communications Corp., One Call Communications, Inc., Pathfinder Communications, Inc., and the Texas Office of Public Utility Counsel. The Commission addressed the petition filed by One Call Communications, Inc. in a subsequent order, 68 FR 43327, July 22, 2003, and the Texas Office of Public Utility Counsel withdrew its petition on July 27, 2000.

Since these petitions were filed, there has been a court of appeals decision and additional Commission orders addressing the rules adopted in the *CALLS Order*, including a decision by the United States Court of Appeals for the Fifth Circuit, an order on remand, 68 FR 50077, August 20, 2003, and an order on reconsideration, 68 FR 43327, July 22, 2003. Issues raised in the pending petitions for reconsideration may therefore have become moot or outdated. As a result, it is not clear whether issues arising out of the *CALLS Order*, if any, remain in dispute. In addition, the reform proposal adopted in the *CALLS Order* has reached the end of its five-year term and the Commission is developing a record on comprehensive intercarrier compensation reform in CC Docket No. 01–92 and on regulation of special access services in WC Docket No. 05–25. Because the petitions for reconsideration were filed several years ago, the passage of time and intervening developments may have rendered the records developed by those petitions stale.

For these reasons, the Bureau requests that parties that filed petitions for reconsideration of the *CALLS Order* now file a supplemental notice indicating those issues that they still wish to be reconsidered. Petitioners may include with the supplemental notices any new information or arguments they believe to be relevant to deciding *only* those issues that they previously raised in their petitions for reconsideration. The refreshed record will enable the Commission to consider what action may be appropriate in this proceeding.

Parties may file supplemental notices updating their previously filed petitions for reconsideration no later than April 20, 2007, with the Secretary, FCC, 445 12th Street, SW., Washington, DC 20554. Oppositions or responses to these filings may be filed with the Secretary, FCC, no later than May 7, 2007. All pleadings are to reference CC Docket Nos. 96–262, 94–1, 99–249, 96–45. All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or

rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *victoria.goldberg@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

The original petitions for reconsideration filed by the parties in CC Docket Nos. 96–262, 94–1, 99–249, 96–45 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.* These documents may also be viewed on the Commission's Web site at *http://www.fcc.gov/cgb/ecfs.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Kirk S. Burgee,

Chief of Staff, Wireline Competition Bureau.

[FR Doc. E7–5078 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 07–1279]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 14, 2007, the Commission released a public notice announcing the April 17, 2007 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Tuesday, April 17, 2007, 9 a.m.

ADDRESSES: Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5–C162, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: March 14, 2007. The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, April 17, 2007, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Tuesday, April 17, 2007, 9 a.m.*

1. Announcements and Recent News
2. Approval of Transcript
   Meeting of February 13, 2007

3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the North American Numbering Portability Management (NAPM) LLC
6. Status of the Industry Numbering Committee (INC) activities
7. Report of the pANI Issues Management Group
   Action Item: Review and Adopt Recommendation for Permanent pANI Administration Guidelines
8. Report from the North American Numbering Plan Billing and Collection (NANP B&C) Agent
9. Report of the Billing & Collection Working Group (B&C WG)
10. Report of the Numbering Oversight Working Group (NOWG)
11. Report of the Local Number Portability Administration (LNPA) Working Group
   Action Item: Intermodal Number Portability, Summary of NANC Actions
12. Report of the Future of Numbering Working Group (FoN WG)
13. Special Presentations
14. Update List of the NANC Accomplishments
15. Summary of Action Items
16. Public Comments and Participation (5 minutes per speaker)
17. Other Business

Adjourn no later than 5 p.m.

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. E7–5075 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011223–037.

Title: Transpacific Stabilization Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; COSCO Container Lines Co., Ltd.; Evergreen Marine Corporation (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment authorizes additional information exchanges with industry and shipper communities, enhances TSA's research capabilities, updates the membership of Evergreen Marine, and reflects that the substitution of COSCO companies will not take place at this time.

Agreement No.: 011972–001.

Title: HSDG/Alianca/CMA CGM Space Charter Agreement.

Parties: Alianca Navegacao e Logistica Ltda e CIA; CMA CGM, S.A.; and Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft KG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would reduce the number of slots chartered to CMA. The parties request expedited review.

Agreement No.: 011982–001.

Title: Evergreen Line Joint Service Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd., Hatsu Marine Ltd., and Italia Marittima S.p.A.

Filing Party: Paul M. Keane, Esq.; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment would add Evergreen Marine (Hong Kong) Ltd. as a party and, effective May 1, 2007, change Hatsu Marine's name to Evergreen Marine (UK) Ltd.

By order of the Federal Maritime Commission.

Dated: March 16, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–5171 Filed 3–20–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Waterford Bancorp, Inc., Sylvania Township, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Waterford Bank, N.A., Sylvania Township, Ohio.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Firstbank Corporation, Alma, Michigan; to merge with ICNB Financial Corporation, Ionia, Michigan, and thereby indirectly acquire voting shares of Ionia County National Bank of Ionia, Ionia, Michigan.

Board of Governors of the Federal Reserve System, March 16, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5132 Filed 3–20–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 062 3019]

Sony BMG Music Entertainment; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments in response to this notice must be received on or before March 23, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Sony BMG Music, File No. 062 3019,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard (202/326–3291), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 30, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/01/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Sony BMG Music Entertainment (''Sony BMG'' or ''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's use of content protection software, also known as Digital Rights Management (DRM) software, embedded on its music CDs and the use of a proprietary media player on many of these CDs that must be used to listen to them. When played on a Windows-based computer, Sony BMG's DRM software is installed on consumers' computers and restricts the use of the audio files and other digital material on the CDs. In addition, the ''XCP'' and ''MediaMax 5.0'' versions of respondent's DRM software create security vulnerabilities on consumers' computers, and, when consumers' computers are connected to the Internet, the media player monitors users' listening habits and sends back relevant advertisements.

According to the FTC complaint, Sony BMG engaged in unfair and deceptive practices in distributing its content-protected CDs. The complaint contains two unfairness charges. The first count alleges that it was unfair for respondent to cause its DRM software, which exposed consumers' to security risks, to be installed on consumers' computers without adequate notification and consent. As alleged in the complaint, respondent's ''XCP'' DRM software contains cloaking technology that hides the existence of the software from the Windows Operating System. The cloaking technology creates a security vulnerability because malicious software that enters users' computers can exploit the cloaking technology to conceal itself from the computers' security software. In addition, respondent's ''MediaMax 5.0'' DRM software creates a ''privilege escalation vulnerability'' that could allow third parties who gain physical access to the computer but who have lower-privilege access to exercise full control over a consumer's computer running the Windows Operating System. Consumers could not reasonably prevent this injury because they did not know of the DRM software's existence or its harmful effects. The complaint therefore alleges that respondent's practices caused, or were likely to cause, substantial consumer injury that consumers could not reasonably avoid and which was not outweighed by countervailing benefits to consumers or competition.

The complaint further alleges as unfair respondent's practices in causing its DRM software that made computers insecure to be installed without providing a reasonable means to locate and/or remove it. As alleged in the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

complaint, Sony BMG's use of cloaking technology and the failure of the ''XCP'' and ''MediaMax 5.0'' software to appear in the Windows ''Add/Remove'' utility hid the existence of the software from consumers and their operating systems. In addition, respondent failed to make an uninstall tool readily available. The complaint alleges that, as a result, consumers incurred substantial costs in locating and removing the DRM software from their computers and in stopping its harmful effects. Thus, the complaint alleges that respondent's practices in failing to provide a reasonable means to locate and remove its DRM software caused, or were likely to cause, substantial consumer injury that could not be reasonably avoided by consumers and did not provide countervailing benefits to consumers or competition.

In addition, the complaint challenges, as deceptive, Sony BMG's failure to disclose adequately that its music CDs install onto computers software that materially limits their use by limiting the number of disc-to-disc copies that consumers can make, and by restricting consumers'' ability to transfer to and play music on digital playback devices other than Sony BMG and Microsoft devices. Finally, the proposed complaint alleges as deceptive respondent's undisclosed inclusion of its media player, which monitors the artists that consumers listen to on their computers and displays advertising.

The proposed consent order contains provisions designed to enhance and expand upon respondent's programs to provide refunds to consumers and includes injunctive relief to protect against future consumer injury from similar acts and practices.

Part I of the proposed order requires Sony BMG to include on the front cover of the packaging for any content-protected CD a clear and prominent disclosure that important consumer information regarding limits on copying and use can be found on the rear of the product packaging. This provision also requires respondent to disclose more fully on the back cover that the CD will install software, if that is the case; has copying limits; and can only be used on certain playback devices. Part II bars Sony BMG from installing content protection software from a CD without consumers' authorization. Specifically, before such software can be installed, respondent must disclose on the consumer's computer screen the information required by Part I and the consumer must have signaled her consent by clicking on a properly labeled button or taking a similar action. Further, in cases where Sony BMG conditions consumers' use of its CDs on their installing content protection software onto their computers, Part III requires that respondent clearly and prominently disclose this requirement on the product packaging.

Regarding ''enhanced connectivity'' CDs (CDs containing respondent's proprietary media player that transmits non-personally identifiable information from consumers' computers to respondent and displays promotional messages on consumers' computers), Part IV of the proposed order, which applies to enhanced connectivity CDs that Sony BMG sells prior to the date that this order becomes final, prohibits respondent from using any information it collects through enhanced connectivity CDs for any marketing purpose and requires respondent to destroy such information within three days of receipt. Part IV also prohibits Sony BMG from using any such information to deliver advertising or marketing messages. Part V, which applies to enhanced connectivity CDs that Sony BMG sells after the order becomes final, requires that if, to use a CD on a computer, consumers must agree to have information collected about them, Sony BMG must disclose this condition clearly and prominently on the product packaging. Further, Part V prohibits Sony BMG from collecting any information using its enhanced connectivity CDs, unless it first discloses that the CD will collect information and/or send back advertising to the computer and obtains consumers' consent to do so.

In connection with the marketing, advertising, or distributing of any CD, Part VI prohibits Sony BMG from installing content protection software that prevents consumers from readily locating or removing the software from the computer. This prohibition includes, but is not limited to, hiding, cloaking, using misleading or random names for, and misrepresenting the purpose or effects of any file, folder, or directory associated with such software.

Part VII requires that respondent provide a reasonable and effective means to uninstall its content protection software. Part VII also provides that Sony BMG is not required to uninstall the ''counter'' file of its software that determines whether the consumer has exceeded the permitted number of copies on the computer, as long as respondent discloses on consumers' computer screens, prior to installing the content protection software, that this file will not be removed and the file does not impair, hinder, or otherwise adversely affect the computer's operation. Part VII further requires that Sony BMG, for a period of two years from the date that the order becomes final, continue to provide free uninstall tools and patches for XCP and MediaMax 5.0 and to disclose the existence of these tools on its Web site. In addition, Part VII of the order requires that Sony BMG notify consumers of the XCP and MediaMax 5.0 vulnerabilities and how to fix their computers, by extending its existing program of purchasing key words on search engines to one year after the date the order becomes final, and also by publishing a notice through its Web site.

Part VIII of the proposed order makes clear that all purchasers, prior to December 31, 2006, of XCP and MediaMax CDs are eligible to participate in its ongoing compensation program. Part VIII also requires Sony BMG to extend the period for accepting exchanges to six months after December 31, 2006. Further, Part VIII of the order requires that Sony BMG reimburse consumers up to $150 of their costs to repair computer damage resulting from their attempts to remove the XCP content protection software before respondent made an uninstall tool readily available. Finally, Part VIII requires Sony BMG to publish notices on its Web site informing consumers about the extended period for exchanging CDs and the ''repair reimbursement'' program.

Part IX of the proposed order requires that, before selling MediaMax CDs from its inventory, Sony BMG must make applicable disclosures about copying and use restrictions on the product packaging. In the case of MediaMax 5.0 CDs, Sony BMG also must disclose on the packaging that, if used on a computer, these CDs will create security vulnerabilities that consumers can eliminate with a patch that they can download, free of charge, from respondent's Web site, and establish an Internet connection through which Sony BMG will collect information from, and send back advertising to, the computer. Also, with respect to MediaMax 5.0 CDs that Sony BMG has sold to retailers, Part IX requires that it offer retailers the same financial incentives to return these CDs as those for XCP CDs. Further, Sony BMG must offer these incentives for two years after the date the order becomes final.

Parts X through XIII of the proposed order are record-keeping and reporting provisions. Part XIV provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–1403 Filed 3–20–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section l0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention and the Health Resources and Services Administration announce the following meeting of the aforementioned committee.

Times and Dates: 8 a.m. – 5 p.m., May 7, 2007. 8 a.m. – 12:30 p.m., May 8, 2007.

Place: Embassy Suites Hotel Atlanta Buckhead, 3285 Peachtree Road, NE., Atlanta, Georgia, Telephone 404/261–7733, Fax 404/262–0522.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

Matters To Be Discussed: Agenda items include issues pertaining to (1) Priorities for STD Prevention (2) HIV Strategic Plan Implementation and (3) Leveraging Federal Partnerships for HIV/STD Prevention. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Committee Management Specialist, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8317, Fax 404/639–8600, e-mail *zkr7@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 14, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 07–1374 Filed 3–20–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on scientific disputes between the Center for Devices and Radiological Health and sponsors, applicants, and manufacturers.

Date and Time: The meeting will be held on April 19, 2007, from 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Nancy Collazo-Braier, Center for Devices and Radiological Health (HFZ–1), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3959, e-mail: *nancy.braier@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014510232. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote regarding a scientific dispute between the agency and Cardima Inc. related to the not-approvable determination for the premarket approval application (PMA) for the REVELATION Tx Microcatheter with NavAblator Ablation System, indicated for the treatment of drug refractory paroxysmal atrial fibrillation.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 5, 2007. Oral presentations from the public will be scheduled between approximately 9 a.m. and 9:30 a.m. and between approximately 1:30 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 28, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 29, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Conference Management Staff, at 301–827–7291, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 14, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–5152 Filed 3–20–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Antimicrobial Resistance Monitoring System Program Subcommittee of the Science Advisory Board to the Food and Drug Administration; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing the following public meeting: Science Board to the FDA National Antimicrobial Resistance Monitoring System (NARMS) Program Subcommittee meeting. The topic to be discussed is the National Antimicrobial Resistance Monitoring System (NARMS) Program. The subcommittee will provide advice to the Science Advisory Board to FDA regarding the NARMS program.

Date and Time: The public meeting will be held on April 10, 2007, beginning at 9 a.m.

Location: The DoubleTree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact: Carlos Pena, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, e-mail: *Carlos.Pena@fda.hhs.gov*.

Agenda: The subcommittee will evaluate the NARMS program and address four questions relevant to the continued success of the program including:

(1) Are there inherent biases in the sampling strategies employed in NARMS? If so, how can they be improved to ensure that the data and interpretation are scientifically sound given current resources?

(2) Are there epidemiological and/or microbiological research studies that would better serve the goals of NARMS and the regulatory work of FDA?

(3) Are current plans for data harmonization and reporting appropriate? If not, what are the top priorities for advancing harmonized reporting? and

(4) Are the current NARMS international activities adequate to address the worldwide spread of antimicrobial-resistant foodborne bacteria?

The subcommittee will discuss the NARMS Program and hear comments on the NARMS Program, including oral presentations from the public on scope, strengths, weaknesses, and areas for improvement.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone and fax number, and e-mail address), and written material and requests to make oral presentations, to the contact person on or before March 28, 2007. Interested persons may present data, information, or views, orally or in writing, on the issues pending before this subcommittee. Written submissions may be made to the contact person on or before March 28, 2007. Oral presentations from the public will be scheduled to begin at 11 a.m. on April 10, 2007. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 20, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open pubic hearing session. The contact person will notify interested person regarding their request to speak by March 20, 2007.

If you need special accommodations due to a disability, please notify the hotel (301–468–1100) at least 7 days in advance of the meeting.

Transcripts: Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: March 14, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–5153 Filed 3–20–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of Grants and Training

Assistance to Firefighters Grant Program

AGENCY: Office of Grants and Training, DHS.

ACTION: Notice of guidance.

SUMMARY: This Notice is to provide guidelines that describe the application process for grants and the criteria for awarding grants in the 2007 Assistance to Firefighters Grant program year, as well as an explanation for any differences with the guidelines recommended to the Department by representatives of the Nation's fire service leadership during the annual Criteria Development meeting held November 1–2, 2006. The program makes grants directly to fire departments and nonaffiliated emergency medical services organizations for the purpose of enhancing first-responders' abilities to protect the health and safety of the public as well as that of first-responder personnel facing fire and fire-related hazards. In addition, the authorizing statute requires that a minimum of five percent of appropriated funds be expended for fire prevention and safety grants, which are also made directly to local fire departments and to local, regional, state or national entities recognized for their expertise in the field of fire prevention and firefighter safety research and development.

As in prior years, this year's grants will be awarded on a competitive basis to the applicants that best reflect the program's criteria and funding priorities, and best address statutory award requirements. As referenced above, this Notice describes the criteria and funding priorities recommended by a panel of representatives of the Nation's fire service leadership (criteria development panel) and accepted by the Department of Homeland Security, unless otherwise noted herein. This Notice contains details regarding the guidance and competitive process descriptions that the Department has provided to applicants and also provides information on how and why the Department deviated from recommendations of the criteria development panel.

Authority: 15 U.S.C. 2229, 2229a.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Assistance to Firefighters Program Office, U.S. Department of Homeland Security, 245

Murray Lane, Building 410, SW., Washington, DC 20528–7000.

SUPPLEMENTARY INFORMATION: The purpose of the Assistance to Firefighters Grant (AFG) Program is to provide grants directly to fire departments and nonaffiliated Emergency Medical Services (EMS) organizations to enhance their ability to protect the health and safety of the public, as well as that of first-responder personnel, with respect to fire and fire-related hazards.

Appropriations

For fiscal year 2007, Congress appropriated $547,000,000 to carry out the activities of the AFG Program. The Department of Homeland Security (DHS) is authorized to use up to $27,350,000 for administration of the AFG program (five percent of the appropriated amount). In addition, DHS has set aside no less than $27,350,000 of the funds (five percent of the appropriation) for the Fire Prevention and Safety Grants in order to make grants to, or enter into contracts or cooperative agreements with, national, state, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention grants and firefighter safety research and development grants. The remaining $492,300,000 will be used for competitive grants to fire departments and nonaffiliated EMS organizations for equipment, training and first responders' safety. Within the portion of funding available for these competitive grants, DHS must assure that no less than three and one-half percent of the appropriation, or $19,145,000, is awarded for EMS equipment and training. However, awards to nonaffiliated EMS organizations are limited to no more than two percent of the appropriation or $10,940,000. Therefore, at least the balance of the requisite awards for EMS equipment and training must go to fire departments.

Background

DHS awards the grants on a competitive basis to the applicants that best address the AFG program's priorities and provide the most compelling justification. Applicants whose requests best address the program's priorities will be reviewed by a panel composed of fire service personnel. The panel will review the narrative and evaluate the application in four different areas: (1) The clarity of the proposed project description, (2) the organization's financial need, (3) the benefit to be derived from the proposed project relative to the cost, and (4) the extent to which the grant would enhance the applicant's daily operations and/or how the grant would positively impact the applicant's ability to protect life and property.

The AFG program for 2007 generally mirrors previous years' programs with a few significant changes. The first significant change is the removal of the restriction regarding the number of vehicles that an applicant may request in a single application. In prior years, all applicants were limited to one vehicle per request and previous vehicle awardees were not eligible for additional vehicle awards. For the 2007 program year, organizations that protect urban or suburban communities will be allowed to apply for multiple vehicles. However, DHS will limit eligible applicants' awards to one vehicle per station. In addition, the total amount of funds that can be awarded to any one applicant will continue to be limited by the statutory limitations detailed below.

The second significant change is to allow applicants to submit as many as three separate applications: a vehicle application, an application for operations and safety; and an application for a ''regional project.'' A ''regional project,'' generally, is a project undertaken by an applicant to provide services and support to a number of other regional participants, such as training for multiple mutual-aid jurisdictions. During the 2006 program year, organizations that applied as a host of a regional project were not able to include activities unrelated to the regional project, *e.g.*, activities to address specific needs of the host applicant versus the region. For the 2007 program year, we will allow host applicants to satisfy their own needs via separate application(s).

As in previous years, regional applications will be required to reflect the general characteristics of the entire represented region. The population covered by the regional project will affect the amount of required local contribution to the project, *i.e.* the cost-share required for the project.

The 2007 program will again segregate the Fire Prevention and Safety Grant (FP&S) program from the AFG. DHS will have a separate application period devoted solely to FP&S in the Fall of 2007. The AFG Web site (*http://www.firegrantsupport.com*) will provide updated information on this program.

Congress has enacted statutory limits to the amount of funding that a grantee may receive from the AFG program in any fiscal year (15 U.S.C. 2229(b)(10)). These limits are based on population served. A grantee that serves a jurisdiction with 500,000 people or less may not receive grant funding in excess of $1,000,000 in any fiscal year. A grantee that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of $1,750,000 in any fiscal year. A grantee that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of $2,750,000 in any fiscal year. DHS may waive these established limits to any grantee serving a jurisdiction of 1,000,000 people or less if DHS determines that extraordinary need for assistance warrants the waiver. No grantee, under any circumstance, may receive ''more than the lesser of $2,750,000 or one half of one percent of the funds appropriated under this section for a single fiscal year.'' In fiscal year 2007, no grantee may receive more than $2,735,000 (one half of one percent of the $547,000,000 appropriated for 2007).

Grantees must share in the costs of the projects funded under this grant program (15 U.S.C. 2229(b)(6). Fire departments and nonaffiliated EMS organizations that serve populations of less than 20,000 must match the Federal grant funds with an amount of non-Federal funds equal to five percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population between 20,000 and 50,000, inclusive, must match the Federal grant funds with an amount of non-Federal funds equal to ten percent of the total project cost. Fire departments and nonaffiliated EMS organizations that serve populations of over 50,000 must match the Federal grant funds with an amount of non-Federal funds equal to twenty percent of the total project costs. All non-Federal funds must be in cash, *i.e.*, in-kind contributions are not eligible. The only waiver granted for this requirement will be for applicants located in Insular Areas as provided for in 48 U.S.C. 1469a.

The law imposes additional requirements on ensuring a distribution of grant funds among career, volunteer, and combination (volunteer and career personnel) fire departments, and among urban, suburban and rural communities. More specifically with respect to department types, DHS must ensure that all-volunteer or combination fire departments receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect (15 U.S.C. 2229(b)(11)). There is no corresponding minimum for career departments. Therefore, subject to the other statutory limitations on DHS ability to award funds, DHS will ensure that, for the 2007 program year, no less

than thirty-three percent (33%) of the funding available for grants will be awarded to combination departments, and no less than twenty-two percent (22%) will be awarded to all-volunteer departments. If, and only if, other statutory limitations inhibit DHS ability to ensure this distribution of funding, DHS will ensure that the aggregate combined total percent of funding provided to both combination and volunteer departments is no less than fifty-five percent.

DHS generally makes funding decisions using rank order resulting from the panel evaluation. However, DHS may deviate from rank order and make funding decisions based on the type of department (career, combination, or volunteer) and/or the size and character of the community the applicant serves (urban, suburban, or rural) to the extent it is required to satisfy statutory provisions.

Fire Prevention and Safety Grant Program

In addition to the grants available to fire departments in fiscal year 2007 through the competitive grant program, DHS will set aside no less than $27,350,000 of the funds available under the AFG program to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention projects, and for research and development grants that address firefighter safety.

In accordance with the statutory requirement to fund fire prevention activities, support to Fire Prevention and Safety Grant activities concentrates on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, DHS places an emphasis on funding innovative projects that focus on protecting children under fourteen, seniors over sixty-five, and firefighters. Because the victims of burns experience both short- and long-term physical and psychological effects, DHS places a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries.

DHS will issue an announcement regarding pertinent details of the Fire Prevention and Safety Grant portion of this program prior to the application period. Interested parties should monitor the grant program's Web site at *http://www.firegrantsupport.com.*

Application Process

Prior to the start of the application period, DHS will conduct applicant workshops across the country to inform potential applicants about the AFG program for 2007. In addition, DHS will provide applicants an online Web-based tutorial and other information to use in preparing a quality application. Applicants are advised to access the application electronically at *https://portal.fema.net,* or through the AFG Web site at *http://www.firegrantsupport.com.* In completing the application, applicants will provide relevant information on the applicant's characteristics, call volume, and existing capacities. Applicants will answer questions regarding their assistance request that reflects the funding priorities (iterated below). In addition, each applicant will complete a narrative addressing statutory competitive factors: financial need, benefits/costs, and improvement to the organization's daily operations. During the application period, applicants will be encouraged to contact DHS via a toll free number or online help desk with any questions. The electronic application process will permit the applicant to enter data and save the application for further use, and will not permit the submission of incomplete applications. Except for the narrative, the application uses a ''point-and-click'' selection process, or requires the entry of information (*e.g.*, name & address, call volume numbers, etc.).

The application period for the AFG grants will be announced in the full Program Guidance. During the approaching application season, the program office expects to receive between 25,000 and 30,000 applications. When available, application statistics on the type of department, type of community, and other factors reflected in the submitted requests will be posted on the AFG Web site: *http://www.firegrantsupport.com.*

Application Review Process

DHS evaluates all applications in the preliminary screening process to determine which applications best address the program's announced funding priorities. This preliminary screening evaluates and scores the applicants' answers to the activity specific questions. Applications containing multiple activities will be given prorated scores based on the amount of funding requested for each activity.

The best applications as determined in the preliminary step are deemed to be in the ''competitive range.'' All applications in the competitive range are subject to a second level review by a technical evaluation panel made up of individuals from the fire service including, but not limited to, firefighters, fire marshals, and fire training instructors. The panelists will assess the application's merits with respect to the clarity and detail provided about the project, the applicant's financial need, the project's purported benefit to be derived from the cost, and the effectiveness of the project to enhance the health and safety of the public and fire service personnel.

Using the evaluation criteria included here, the panelists will independently score each application before them and then discuss the merits and shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The panelists will assign a score to each of the elements detailed above. DHS will then consider the highest scoring applications resulting from this second level of review for awards.

DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. DHS will announce the awards over several months and will notify applicants that will not receive funding as soon as feasible. DHS will not make awards in any specified order, *i.e.*, not by State, program, nor any other characteristic.

Criteria Development Process

Each year, the DHS conducts a criteria development meeting to develop the program's priorities for the coming year. DHS brings together a panel of fire service professionals representing the leadership of the nine major fire service organizations:

- International Association of Fire Chiefs (IAFC),
- International Association of Firefighters (IAFF),
- National Volunteer Fire Council (NVFC),
- National Fire Protection Association (NFPA),
- National Association of State Fire Marshals (NASFM),
- International Association of Arson Investigators (IAAI),
- North American Fire Training Directors (NAFTD),
- International Society of Fire Service Instructors (ISFSI),
- Congressional Fire Service Institute (CFSI).

The criteria development panel is charged with making recommendations to the grants program office regarding the creation and/or modification of program priorities as well as development of criteria and definitions as necessary.

The governing statute requires that DHS publish each year in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards. DHS must also include an explanation of any differences between the published guidelines and the recommendations made by the criteria development panel. The guidelines and the statement regarding the differences between the guidelines and the criteria development panel recommendations must be published in the **Federal Register** prior to awarding any grants under the program. 15 U.S.C. 2229(b)(14).

Accordingly, DHS provides the following explanation of its decisions to modify or decline to adopt the criteria development panel's recommendations:

• The criteria development panel recommended allowing multiple vehicle requests for departments serving urban communities but did not provide a similar recommendation for departments serving suburban communities. DHS concurs with this recommendation but believes there is also sufficient benefit to be realized by extending the same consideration to departments serving suburban communities. As such, DHS will allow urban and suburban departments to apply for multiple vehicles during the 2007 program year. The applications, however, will be limited to one vehicle per station and any applicable statutory funding limits.

• In recent years, DHS has prohibited previous vehicle awardees from receiving a second vehicle grant. The criteria development panel recommended that DHS allow certain vehicle grantees an opportunity to receive a second vehicle grant. Specifically, they recommended that DHS implement a five-year moratorium on applying for a second vehicle allowing vehicle grantees from 2001 and 2002 to receive vehicle funding in 2007. DHS believes that in light of the recommendation to allow certain departments to apply for multiple vehicles, placing any restriction on previous awardees would not be equitable. As such, for the 2007 program year, DHS will allow any applicant to apply for a vehicle regardless of the applicant's previous grant history.

• The criteria development panel recommended that any multiple vehicle requests be restricted to multiple vehicles of the same class. The criteria development panel's rationale was that a department could otherwise request several high priority vehicles as well as lower priority vehicles which could result in funding of lower priority vehicles in lieu of high priorities. DHS believes limiting applicants to one type of vehicle is overly restrictive and not responsive to organizations' needs. Therefore, DHS will not implement this recommendation and will allow departments to apply for any need.

• While risk is taken into consideration when determining which applications should go to panel, DHS did not believe that the criteria development group provided sufficient consideration for risks that a community faces. As such, DHS will provide higher consideration for departments that protect a higher population than departments that protect lower populations. Another measure of benefit will be the frequency in which any equipment or training would be used. As such, the number of incidents (call volume) that an organization responds to is directly relevant to the frequency at which any equipment or training would be used—i.e., the higher levels of incidents should afford higher consideration for benefit/cost to an application. In the implementation of previous years' programs, DHS had utilized separate matrices for departments that protected urban, suburban and urban communities when determining the consideration for incidents. DHS believes that when using separate matrices, urban departments receive too little consideration relative to the incidents of an urban department. In order to remove this inequity, DHS will utilize a single, combined matrix when determining consideration for an applicant's level of incidents for fire departments.

• The criteria development group disagreed with DHS that vehicle awardees must strictly adhere to National Fire Protection Association (NFPA) guidelines regarding driver/operator training. Specifically, NFPA 1002 requires that drivers not only undergo driver and operator training, but also pass a firefighter physical (NFPA 1582) and be trained in basic firefighting (NFPA 1001). The criteria development group recommended that DHS require only the driver/operator training and a physical that did not meet NFPA standards. Finally, they recommended that DHS ignore the NFPA requirement that all drivers be sufficiently trained in basic firefighting. DHS will adhere to the standards provided by NFPA and require any vehicle awardee to administer a comprehensive driver/operator training program consistent with NFPA 1002.

• There are more EMS incidents than fire incidents. The criteria development group did not take the different response levels into account when recommending the matrices to determine consideration for the number of incidents. When evaluating EMS organizations' applications, therefore, DHS will use a different matrix than that used for evaluating fire departments' applications. DHS will also take into account existing vehicle's mileage.

• The criteria development committee did not make any recommendations to limit the items eligible for funding under the Fire Prevention and Safety Grants program. However, the purchase of certain items has been criticized as unnecessary to fire prevention efforts. Accordingly, when considering requests for fire prevention safety activities, DHS will limit the items that may be purchased to include, for example, mobile safety education trailers and model homes that are not usable for habitation or commercial purposes; curriculum materials and appropriate supplies; CPR (cardiopulmonary resuscitation) training tools; fire extinguisher training tools; and media equipment.

• The criteria development committee included formal physical fitness equipment and programs as a high priority and prerequisite (along with physicals and immunizations) for any other wellness and fitness funding. DHS disagrees that federal funding of exercise equipment should be a prerequisite for other wellness and fitness activities and placing a high priority on federal funding of exercise equipment over-emphasizes exercise in relation to physicals and immunizations. Therefore, DHS includes this activity as a lower priority.

• The criteria development committee recommended that the eligible activities under modifications to facilities be expanded to include storm doors and storm windows. While DHS appreciates the recommendation to mitigate losses from certain natural disasters, DHS determined that the previously eligible activities were sufficient. Specifically, under modifications to facilities, DHS will only fund: (1) Installation of sprinkler systems; (2) vehicle exhaust extraction systems; (3) smoke and fire alarm notification systems; and (4) emergency facility generators.

• DHS also made several minor modifications to the automated scoring matrix meant to correct unintended inconsistencies between the recommendations provided by the panel and DHS' interpretation of the intent of the recommendations.

In making these modifications, DHS looks to the broader Administration priorities established in Homeland Security Presidential Directive 8 (HSPD

8), 39 *Weekly Comp. Pres. Docs.* 1822 (Dec. 17, 2003). DHS is mindful of some differences between the AFG statutory mandates and HSPD–8 priorities, such as the statutory requirement that DHS make AFG grants directly to fire departments and non-affiliated EMS organizations, as contrasted with the HSPD–8 preference for funding through the States. However, the AFG is consistent with the National Preparedness Goal called for by HSPD–8 by prioritizing investments based upon the assessment of an applicant's need and capabilities to effectively prepare for and respond to all hazards, including terrorism threats, and a consideration of the characteristics of the community served (e.g. presence of critical infrastructure, population served, call volume) to the extent permitted by law. To the extent practical, AFG has attempted to harmonize the directions from the President and the Secretary with the requirements and limitations of the authorization and the structure of the fire service. Federal funding of assets devoted to basic firefighting should complement all aspects of responding to the more complex chemical/biological/radiological/nuclear/-explosive (CBRNE) threat.

Review Considerations

Fire Department Priorities

Specific rating criteria for each of the eligible programs and activities are discussed below. The funding priorities described in this Notice have been recommended by a panel of representatives from the Nation's fire service leadership and have been accepted by DHS for the purposes of implementing the AFG. These rating criteria provide an understanding of the grant program's priorities and the expected cost-effectiveness of any proposed project(s). The activities listed below are in no particular order of priority. Within each activity, DHS will consider the number of people served by the applicant with higher populations afforded more consideration than lower populations. DHS will further explain program priorities in Program Guidance to be published separately.

(1) *Operations and Firefighter Safety Program.*

(i) *Training Activities.* In implementing the fire service's recommendations, DHS has determined that the most benefit will be derived from instructor-led, hands-on training that leads to a nationally-sanctioned or State certification. Training requests that include Web-based home study or distance learning or the purchase of training materials, equipment, or props are a lower priority. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, will receive a higher competitive rating. Training that (1) Involves instructors, (2) requires the students to demonstrate their grasp of knowledge of the training material via testing, and (3) is integral to a certification will receive a high competitive rating. Instructor-led training that does not lead to a certification, and any self-taught courses, are of lower benefit, and therefore will not receive a high priority.

DHS will give higher priority, within the limitations imposed by the authorizing statutes, to training proposals which improve coordination capabilities across disciplines (Fire, EMS, and Police), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*i.e.* bomb threat or IED response), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

Due to the inherent differences between urban, suburban, and rural firefighting characteristics, DHS has accepted the recommendations of the criteria development panel for different priorities in the training activities of departments that service these different types of communities. CBRNE awareness training has a high benefit, however, and will receive the highest consideration regardless of the type of community served and regardless of the absence of any national standard.

For fire departments serving rural communities, DHS has determined that funding basic, operational-level firefighting, operational-level rescue, driver training, and first-responder EMS, EMT-B, and EMT-I training (*i.e.*, training in basic firefighting, EMS, and rescue duties) has greater benefit than funding officer training, safety officer training, or incident-command training. In rural communities, after basic training, there is a greater cost-benefit ratio for officer training than for other specialized types of training such as mass casualty, HazMat, advance rescue and EMT-P, or inspector training.

Conversely, for departments that are serving urban or suburban communities, DHS has determined that, due to the number of firefighters and the relatively-high population protected, any training requests will receive a high priority rating regardless of the level of training requested. As such, when considering applications for training from departments serving urban and suburban communities, DHS will give higher priority to training proposals which improve coordination capabilities across first-responder disciplines (fire, EMS, and law enforcement), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*e.g.*, weapons of mass destruction (WMD) awareness and incident operations, chemical or biological operations, or bomb threats), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

(ii) *Wellness and Fitness Activities.* In implementing the criteria panel's recommendations, DHS has determined that fire departments must offer periodic health screenings, entry physical examinations, and an immunization program to have an effective wellness/fitness program. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* to receive funding for any other initiatives in this activity. After entry-level physicals, annual physicals, and immunizations, DHS will give priority to formal fitness and injury prevention programs. DHS will give lower priority to stress management, injury/illness rehabilitation, and employee assistance.

DHS has determined the greatest relative benefit will be realized by supporting new wellness and fitness programs. Therefore, applicants for new wellness/fitness programs will receive higher competitive ratings when compared with applicants whose wellness/fitness programs lack one or more of the three top priority items cited above, and applicants that already employ the requisite three activities of a wellness/fitness program. Finally, because participation is critical to achieving any benefits from a wellness or fitness program, applications that mandate or provide incentives for participation will receive higher competitive ratings.

(iii) *Equipment Acquisition.* As stated in the AFG authorization statute, DHS administers this grant program to protect the health and safety of firefighters and the public from fire and fire-related hazards. As such, equipment that has a direct effect on the health and safety of either firefighters or the public will receive a higher competitive rating than equipment that has no such effect. Equipment that promotes interoperability with neighboring jurisdictions (especially for communications equipment

interoperable with a regional shared system) will receive additional consideration in the cost-benefit assessment if the application makes it into the competitive range.

The criteria development panel concluded that this grant program will achieve the greatest benefits if the grant program provides funds to purchase firefighting equipment (including rescue, EMS, and/or CBRNE preparedness) that the applicant has not owned prior to the grant, or to replace used or obsolete equipment.

For the 2007 program year, the criteria development panel has recommended that DHS make a distinction between ''new missions'' and ''new risks.'' According to the panel, a department takes on a new mission when it expands its services into areas not previously offered, such as a fire department seeking funding to provide emergency medical services for the first time. A ''new risk'' presents itself when a department must address risks that have materialized in the department's area of responsibility, for example, the construction of a plant that uses significant levels of certain chemicals could constitute a ''new risk.'' An organization taking on ''new risks'' should be afforded higher consideration than departments taking on a ''new mission.'' New missions receive a lower priority due to the potential that an applicant will not be able to financially support and sustain the new mission beyond the period of the grant. However, applicants can mitigate the impact of ''New Missions'' on the competitiveness of their application by providing evidence that the department will be able to support and sustain the new mission beyond the period of grant.

Departments responding to high call volumes will be afforded a higher competitive rating than departments responding to lower call volumes. In other words, those departments that are required to respond more frequently will receive a higher competitive rating then those that respond less frequently.

The purchase of equipment that brings the department into statutory or regulatory compliance will provide the highest benefit and therefore will receive the highest consideration. The purchase of equipment that brings a department into voluntary compliance with national standards will also receive a high competitive rating, but not as high as for the purchase of equipment that brings a department into statutory compliance. The purchase of equipment that does not affect statutory compliance or voluntary compliance with a national standard will receive a lower competitive rating.

(iv) *Personal Protective Equipment Acquisition.* To achieve the Program's goals and maximize the benefit to the firefighting community, DHS believes that it must fund those applicants needing to provide personal protective equipment (PPE) to a high percentage of their personnel. Accordingly, DHS will assign a higher competitive rating in this category to fire departments where a larger number of active firefighting staff is without compliant PPE. DHS will assign a high competitive rating to departments that will purchase the equipment for the first time as opposed to departments replacing obsolete or substandard equipment (*e.g.*, equipment that does not meet current NFPA and OSHA standards). For those departments that are replacing obsolete or substandard equipment, DHS will factor the age and condition of the equipment to be replaced into the score with a higher priority given to replacing old, damaged, torn, and/or contaminated equipment.

DHS will only consider funding applications for personal alert safety system (PASS) devices that meet current national safety standards, *i.e.*, integrated and/or automatic or automatic-on PASS. Finally, DHS takes into account the number of fire response calls that a department makes in a year with the higher priority going to departments with higher call volumes, while applications from departments with low call volumes are afforded lower competitive ratings.

(v) *Modifications to Fire Stations and Facilities.* DHS believes that more benefit is derived from modifying fire stations than by modifying fire-training facilities or other fire-related facilities. The frequency of use has a bearing on the benefits derived from grant funds. As such, DHS will afford facilities occupied 24-hours-per-day/seven-days-a-week the highest consideration when contrasted with facilities used on a part-time or irregular basis. Facilities open for broad usage and which have a high occupancy capacity receive a higher competitive rating than facilities that have limited use and/or low occupancy capacity. The frequency and duration of a facility's occupancy have a direct relationship to the benefits realized from funding in this activity.

(2) *Firefighting Vehicle Acquisition Program.* Due to the inherent differences between urban, suburban, and rural firefighting conventions, DHS has developed different priorities in the vehicle program for departments that service different types of communities. The following chart delineates the priorities in this program area for each type of community. Due to the competitive nature of this program and the imposed limits of funding available for this program, it is unlikely that DHS will fund many vehicles not listed as a Priority One during the 2007 program year.

VEHICLE PROGRAM PRIORITIES

Priority	Urban communities	Suburban communities	Rural communities
Priority One	Pumper Aerial Quint (Aerial < 76') Quint (Aerial 76' or >) Rescue	Pumper Aerial Quint (Aerial < 76') Quint (Aerial 76' or >) Brush/Attack	Pumper Brush/Attack Tanker/Tender Quint (Aerial < 76')
Priority Two	Command HazMat Light/Air Rehab	Command HazMat Rescue Tanker/Tender	HazMat Rescue Light/Air Aerial Quint (Aerial 76' or >)
Priority Three	Foam Truck ARFFV Brush/Attack Tanker/Tender Ambulance	Foam Truck ARFFV Rehab Light/Air Ambulance	Foam Truck ARFFV Rehab Command Ambulance

VEHICLE PROGRAM PRIORITIES—Continued

Priority	Urban communities	Suburban communities	Rural communities
	Fire Boat	Fire Boat	Fire Boat

DHS will evaluate the marginal value derived from an additional vehicle of any given type on the basis of call volume. As a result, departments with fewer vehicles of a given type than other departments who service comparable call volumes are more likely to score competitively than departments with more vehicles of that type and comparable call volume unless the need for an additional vehicle of such type is made apparent in the application.

In 2007, applicants may submit requests for more than one vehicle. Applicants must supply sufficient justification for each vehicle contained in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional vehicle(s) given the potential use and the population protected. DHS anticipates that the panels will only recommend an award for a multiple-vehicles application when the cost-benefit justification is adequately compelling.

DHS believes that a greater benefit will be derived from funding an additional vehicle(s) to departments that own fewer or no vehicles of the type requested. As such, DHS assigns a higher competitive rating in the apparatus category to fire departments that own fewer firefighting vehicles relative to other departments serving similar types of communities (*i.e.*, urban, suburban and rural). DHS assesses all vehicles with similar functions when assessing the number of vehicles a department possesses within a particular type. For example, the ''pumper'' category includes: pumpers, engines, pumper/tankers (apparatus that carries a minimum of 300 gallons of water and has a pump with a capacity to pump a minimum of 750 gallons per minute), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I). Apparatus that has water capacity in excess of 1,000 gallons and a pump with pumping capacity of less than 750 gallons per minute are considered to be a tanker/tender.

DHS assigns a higher competitive rating to departments possessing an aged fleet of firefighting vehicles. DHS will also assign a higher competitive rating to departments that respond to a high volume of incidents.

DHS will give lower priority to funding departments seeking apparatus with the goal to expand into new mission areas unless the applicant demonstrates that they will be able to support and sustain the new mission or service area beyond the grant program.

DHS will assign no competitive advantage to the purchase of standard model commercial vehicles relative to custom vehicles, or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that, depending on the type and size of department, the peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

DHS will allow departments serving urban or suburban communities to apply for more than one vehicle. DHS, however, will allow departments serving rural communities to apply for only one vehicle. DHS will limit applications from suburban or urban departments to one vehicle per station as well as by the statutory funding limits. DHS will not limit applications because of a vehicle award from previous AFG program years, i.e., previous vehicle awardees are eligible for funding for additional vehicles in 2007.

(3) *Administrative Costs.* Panelists will assess the reasonability of the administrative costs requested in any application and determine if the request is reasonable and in the best interest of the program.

Nonaffiliated EMS Organization Priorities

DHS may make grants for the purpose of enhancing the provision of emergency medical services by nonaffiliated EMS organizations. The authorizing statute limits funding for these organizations to no more than two percent of the appropriated amount. DHS has determined that it is more cost-effective to enhance or expand an existing emergency medical service organization by providing training and/or equipment than to create a new service. Communities that do not currently offer emergency medical services but are turning to this grant program to initiate such a service received the lowest competitive rating. DHS does not believe creating a nonaffiliated EMS program is a substantial and sufficient benefit under the program.

Specific rating criteria and priorities for each of the grant categories are provided below following the descriptions of this year's eligible programs. The rating criteria, in conjunction with the program description, provide an understanding of the evaluation standards. In each activity, the amount of the population served by the applicant will be taken into consideration with higher populations afforded more consideration than low populations served. DHS will further explain program priorities in the Program Guidance upon publication thereof.

(1) *EMS Operations and Safety Program.*

Five different activities may be funded under this program area: EMS training, EMS equipment, EMS personal protective equipment, wellness and fitness, and modifications to facilities. Requests for equipment and training to prepare for response to incidents involving CBRNE were available under the applicable equipment and training activities.

(i) *Training Activities.* DHS believes that upgrading a service that currently meets a basic life support capacity to a higher level of life support creates the most benefit. Therefore, DHS will give a higher competitive rating to nonaffiliated EMS organizations that seek to upgrade from first responder to EMT-B level. Because training is a pre-requisite to the effective use of EMS equipment, organizations with requests more focused on training activities received a higher competitive rating than organizations whose request is more focused on equipment. The second priority is to elevate emergency responders' capabilities from EMT-B to EMT-I or higher.

(ii) *EMS Equipment Acquisition.* As noted above, training received a higher competitive rating than equipment. Applications seeking assistance to purchase equipment to support the EMT-B level of service received a higher priority than requests seeking assistance

to purchase equipment to support advance level EMS services. Items that are eligible but a lower priority include tents, shelters, generators, lights, and heating and cooling units. Firefighting equipment is not eligible under this activity.

As discussed previously, organizations taking on ''new risks'' will be afforded much higher consideration than an organization taking on a ''new mission.''

(iii) *EMS Personal Protective Equipment.* DHS gave the same priorities for EMS PPE as it did for fire department PPE discussed above. Acquisition of PASS devices or any firefighting PPE is not eligible, however, for funding for EMS organizations.

(iv) *Wellness and Fitness Activities.* DHS believes that to have an effective wellness/fitness program, nonaffiliated EMS organizations must offer periodic health screenings, entry physical examinations, and an immunization program similar to the programs for fire departments discussed previously. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* (periodic health screenings, entry physical examinations, and an immunization program) to receive funding for any other initiatives in this activity. The priorities for EMS wellness/fitness programs are the same as for fire departments as discussed above.

(v) *Modification to EMS Stations and Facilities.* DHS believes that the competitive rankings and priorities applied to modification of fire stations and facilities, discussed above, apply equally to EMS stations and facilities.

(2) *EMS Vehicle Acquisition Program.* DHS gave the highest funding priority to acquisition of ambulances and transport vehicles due to the inherent benefits to the community and EMS service provider. Due to the costs associated with obtaining and outfitting non-transport rescue vehicles relative to the benefits derived from such vehicles, DHS will give non-transport rescue vehicles a lower competitive rating than transport vehicles. Vehicles that have a very narrow function, such as aircraft, boats, and all-terrain vehicles, received the lowest competitive rating. DHS anticipates that the EMS vehicle awards will be very competitive due to very limited available funding. Accordingly, DHS will likely only fund vehicles that are listed as a ''Priority One'' in the 2007 program year.

The following chart delineates the priorities in this program area for EMS vehicle program. The priorities are the same regardless of the type of community served.

EMS VEHICLE PRIORITIES

Priority one	Priority two	Priority three
• Ambulance or transport unit to support EMT-B needs and functions	• First responder non-transport vehicles • Special operations vehicles	• Helicopters/planes. • Command vehicles. • Rescue boats (over 13 feet in length). • Hovercraft. • Other special access vehicles.

Along with the priorities illustrated above, DHS has accepted the fire service recommendation that emerged from the criteria development process that funding applicants that own few or no vehicles of the type sought will be more beneficial than funding applicants that own numerous vehicles of that same type. DHS assesses the number of vehicles an applicant owns by including all vehicles of the same type. For example, transport vehicles will be considered the same as ambulances. DHS will give a higher competitive rating to applicants that have an aged fleet of emergency vehicles, and to applicants with old, high-mileage vehicles. DHS will give a higher competitive rating to applicants that respond to a significant number of incidents relative to applicants responding less often. Finally, DHS will afford applicants with transport vehicles with high mileage more consideration than applicants with vehicles that driven extensively.

(3) *Administrative Costs.* Panelists assess the reasonableness of the administrative costs requested in each application and determined whether the request will be reasonable and in the best interest of the program.

Dated: March 16, 2007.

George W. Foresman,

Under Secretary for Preparedness.

[FR Doc. 07–1380 Filed 3–16–07; 12:58 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–06]

Re-Accreditation and Re-Approval of Camin Cargo Control Inc., as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Camin Cargo Control Inc., of Chelsea, Massachusetts, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Camin Cargo Control Inc., 471 Eastern Avenue, Chelsea, Massachusetts 02150, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Camin Cargo Control Inc., as a commercial gauger and laboratory became effective on August 22, 2006. The next triennial inspection date will be scheduled for August 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 15, 2007.

Ira S. Reese,

Executive Director Laboratories and Scientific Services.

[FR Doc. E7–5098 Filed 3–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–10]

Re-Approval of Petrospect, Inc., as a Commercial Gauger

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Petrospect, Inc., of Honolulu, Hawaii, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Petrospect, Inc., 499 N. Nimitz Pier 21, Honolulu, Hawaii 96817, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the Bureau of Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of Petrospect, Inc., as a commercial gauger became effective on August 22, 2006. The next triennial inspection date will be scheduled for August 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 15, 2007.

Ira S. Reese,

Executive Director Laboratories and Scientific Services.

[FR Doc. E7–5100 Filed 3–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–07]

Re-Accreditation and Re-Approval of Inspectorate America Corporation as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corporation of Penuelas, Puerto Rico, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Inspectorate America Corporation, Bo. Encarnacion 127 KM 19.1, Tallaboa-Penuelas, Puerto Rico 00624, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of Inspectorate America Corporation as a commercial gauger and laboratory became effective on September 6, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 15, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–5104 Filed 3–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–08]

Re-Accreditation and Re-Approval of Thionville Surveying Co., Inc., as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Thionville Surveying Co., Inc., of New Orleans, Louisiana, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Thionville Surveying Co., Inc., 5440 Pepsi Street, Harahan, Louisiana 70123, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of Thionville Surveying Co., Inc., as a commercial gauger and laboratory became effective on June 23, 2005. The next triennial inspection date will be scheduled for June 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 15, 2007.

Ira S. Reese,

Executive Director Laboratories and Scientific Services.

[FR Doc. E7–5105 Filed 3–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–09]

Re-Accreditation of R. Markey & Sons, Inc., as a Commercial Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-accreditation of R. Markey & Sons, Inc., of New York, New York, as an accredited commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, R. Markey & Sons, Inc., 5 Hanover Square, New York, New York 10004, has been re-accredited to test sugar, sugar syrups and confectionary products under Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analysis should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific tests this entity is accredited to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-accreditation of R. Markey & Sons, Inc., as an accredited laboratory became effective on February 15, 2005. The next triennial inspection date will be scheduled for February 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 15, 2007.

Ira S. Reese,

Executive Director Laboratories and Scientific Services.

[FR Doc. E7–5106 Filed 3–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Tuna—Tariff-Rate Quota; The Tariff-Rate Quota for Calendar Year 2007, on Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2007.

SUMMARY: Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2007.

DATES: *Effective Dates:* The 2007 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile Enforcement and Operations Division, Trade Policy and Programs, Office of International Trade, Bureau of Customs and Border Protection, Washington, DC 20229, (202) 344–2650.

Background

It has been determined that 18,678,022 kilograms of tuna in air-tight containers may be entered and withdrawn from warehouse for consumption during the Calendar Year 2007, at the rate of 6 percent ad valorem under subheading 1604.14.22, HTSUS. Any such tuna which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: March 15, 2007.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E7–5101 Filed 3–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–25]

Notice of Submission of Proposed Information Collection to OMB; Request Voucher for Grant Payment and Line of Credit Control Dystem (LOCCS) Voiced Response System Access Authorization

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.

Payment request vouches for distribution of grant funds using the automated Voice Response System (VRS). An authorization form is submitted to establish access to the voice activated payment system.

DATES: *Comments Due Date:* April 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0102) 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: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *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 Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Request Voucher for Grant Payment and Line of Credit Control Dystem (LOCCS) Voiced Response System Access Authorization.

OMB Approval Number: 2535–0102.

Form Numbers: HUD–27053, HUD–27054.

Description Of The Need For The Information And Its Proposed Use: Payment request vouches for distribution of grant funds using the automated Voice Response System (VRS). An authorization form is submitted to establish access to the voice activated payment system.

Frequency Of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,420		116		0.169		47,722

Total Estimated Burden Hours: 47,722

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 16, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–5164 Filed 3–20–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–24]

Notice of Submission of Proposed Information Collection to OMB; Single Family Premium Collection Subsystem—Upfront

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.

Lenders use the Single Family Premium Collection Subsystem—Upfront (SFPCS–U) to remit the upfront premium to obtain mortgage insurance for the homeowner. The information strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections to submit data. It also improves data integrity for the Single Family Mortgage Insurance Program.

DATES: *Comments Due Date:* April 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0423) 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: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *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 Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Single Family Premium Collections Subsystem—Upfront.

OMB Approval Number: 2502–0423.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Lenders use the Single Family Premium Collection Subsystem—Upfront (SFPCS–U) to remit the upfront premium to obtain mortgage insurance for the homeowner. The information strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections to submit data. It also improves data integrity for the Single Family Mortgage Insurance Program.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	10,735	38.70		0.080		33,238

Total Estimated Burden Hours: 33,238.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 16, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–5165 Filed 3–20–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–22]

Notice of Availability of Addendum to the Record of Decision and Lead Agency Findings Statement for the World Trade Center Memorial and Redevelopment Plan in the Borough of Manhattan, City of New York, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the Lower Manhattan Development Corporation (LMDC) has adopted Addendum D–1 (ROD Addendum) to the Record of Decision and Lead Agency Findings Statement (ROD) for the World Trade Center Memorial and Redevelopment Plan (Approved Plan). This notice is given on behalf of LMDC. LMDC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York). As the recipient of HUD Community Development Block Grant funds appropriated for the World Trade Center disaster recovery and rebuilding efforts, LMDC acts, pursuant to 42 U.S.C. 5304(g), as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4. LMDC also acts under its authority as lead agency in accordance with the New York State Environmental Quality Review Act (SEQRA). The ROD Addendum has been adopted in coordination with the Port Authority of New York and New Jersey (Port Authority). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

FOR FURTHER INFORMATION CONTACT: Further information and a copy of the ROD Addendum and Technical Memorandum may be obtained by contacting Avalon Simon, Paralegal, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006; telephone number (212) 962–2300. Further information and a copy of the ROD Addendum and Technical Memorandum are also available on LMDC's Web site: *http://renewnyc.com* in the ''Planning, Design & Development'' section. A copy of the ROD Addendum and Technical Memorandum is also available for public review at the following locations: (1) Chatham Square Library, 33 East Broadway, New York, NY 10002; (2) New Amsterdam Library, 9 Murray Street, New York, NY 10007; (3) Humanities and Social Sciences Library, 476 Fifth Avenue, New York, NY 10018; (4) Hamilton Fish Library, 415 East Houston Street, New York, NY 10002; (5) Hudson Park Library, 66 Leroy Street, New York, NY 10014; (6) Manhattan Community Board 1, 49–51 Chambers Street, #715, New York, NY 10007; (7) Manhattan Community Board 2, 3 Washington Square Village, Suite 1A, New York, NY 10012; and (8) Manhattan Community Board 3, 59 East 4th Street, New York, NY 10003.

SUPPLEMENTARY INFORMATION: A Technical Memorandum on the ROD Addendum, which creates an alternative compliance path to achieve the objectives of the Sustainable Design Guidelines set forth in Appendix D to the ROD, as well as other project changes, has been prepared by LMDC, as lead agency, in cooperation with HUD and the Port Authority. Based on this assessment, LMDC has determined that the ROD Addendum will not, either individually or cumulatively, have a significant impact on the quality of the human environment or a significant adverse environmental impact not already analyzed and disclosed in the ROD or the FGEIS for the Approved Plan. Therefore, a supplemental environmental impact statement will not be undertaken under NEPA or SEQRA. LMDC has adopted all practicable means to avoid or minimize environmental harm from the selected project and adopted monitoring and enforcement programs where applicable for mitigation.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: March 13, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–5096 Filed 3–20–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; Electronic Reporting of Bird Electrocutions and Collisions with Power Lines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: You must submit comments on or before May 21, 2007.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see **ADDRESSES**) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) (MBTA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), and the Endangered Species Act (16 U.S.C. 1531 *et seq.*) make it unlawful to take without a permit federally listed migratory birds, including bald and golden eagles, endangered or threatened species, or any of the migratory birds listed under the MBTA. These laws define take to include pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of these acts. The MBTA makes it a strict liability offense to take any of the federally listed migratory bird species contained in 50 CFR 10.13. The MBTA does not authorize issuance of permits for unintentional take of migratory birds; e.g., for birds killed on power lines, poles, and equipment operated by the electric utility industry.

The electric utility industry has documented instances of birds being killed by electrocutions and collisions with power equipment since the 19th Century. A bird is electrocuted when it contacts two energized phases (wires) at the same time, or when it simultaneously contacts grounded pole equipment and an energized phase. Large birds with long wingspans are most at risk, particularly species such as eagles and hawks that use power poles and towers for hunting, resting, feeding, nesting, and territorial defense. In areas where eagles occur, bald and golden eagles are electrocuted at a much higher rate than other birds. Since 2000, bald eagle electrocutions in Alaska make up 58 percent of the documented bird electrocutions.

We are asking electric utility companies to input information into the electronic bird incident reporting system. The information that we plan to collect includes:

(1) Details on the fatality/injury of the bird.

(2) Location where the bird was found.

(3) Configuration of the electrical equipment.

(4) Environmental conditions.

(5) Existing protection/retrofit measures.

(6) Photographs.

We will use this information as a management tool to facilitate a cooperative approach between the Service and the electric utility industry to address the wide-scale problem of bird electrocutions and collisions with power equipment. The information will help us to understand how and why a bird is electrocuted or involved in a collision with power equipment, and will assist in the development and use of effective and economically feasible electrical configurations and protective equipment to prevent future bird electrocutions and collisions.

The information will be available only to designated Service representatives and to the submitting electric utility for its internal use, unless the electric utility decides to share certain information in the query results section of the system.

II. Data

OMB Control Number: None.

Title: Electronic Reporting of Bird Electrocutions and Collisions with Power Lines.

Service Form Number(s): None.

Type of Request: New collection.

Affected Public: Electric utility companies.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 120.

Estimated Total Annual Responses: 1,440.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 360.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC.

Dated: March 5, 2007

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E7–5076 Filed 3–20–07; 8:45 am

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Draft Environmental Impact Report/ Environmental Impact Statement for the Buena Vista Lagoon Restoration Project, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the Fish and Wildlife Service (Service), the California Department of Fish and Game (CDFG), and the State Coastal Conservancy (SCC) are announcing our intent to prepare a joint Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS) for the proposed restoration of approximately 200 acres (81 hectares) of wetland habitat at Buena Vista Lagoon, a coastal lagoon in the cities of Carlsbad and Oceanside, CA. The Buena Vista Lagoon is a State Ecological Reserve, managed by the CDFG. It is bordered by the Pacific Ocean on the west, Vista Way/State Highway 78 on the north, and Jefferson Street on the east and south. The proposed action, for purposes of environmental analysis, is restoration of the Buena Vista Lagoon to a predominantly tidal saltwater system to increase shorebird and marine fish habitat, while taking advantage of the lagoon basin bathymetry to protect and enhance existing freshwater habitat at the lagoon's upper (easterly) end that supports sensitive bird species. The DEIR/DEIS is being developed to assess the impacts of various lagoon restoration alternatives as discussed below and further identified during the public scoping process.

DATES: A public scoping meeting to receive input on topics, issues, and alternatives for the DEIS/DETR is scheduled for April 18, 2007, from 6:30 p.m. to 8 p.m. Written comments will be accepted until close of business on April 20, 2007. See **ADDRESSES** section below for information on submitting comments.

ADDRESSES: The public scoping meeting will be held at the City of Carlsbad, Faraday Building, Room 173 A & B, 1635 Faraday Avenue, Carlsbad, CA 92008. Written comments should be addressed to the Coastal Program Coordinator, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011. Written comments may be sent by facsimile to 760–431–5901. Comments may be submitted by electronic mail (e-mail) to: *fw8cfwocomments@fws.gov*. Please include ''Public Comments on the Buena Vista Lagoon Restoration NOI'' in the subject line of the email and your name and return address in the body of your e-mail message.

FOR FURTHER INFORMATION CONTACT: Jack Fancher, Coastal Program Coordinator, Carlsbad Fish and Wildlife Office, 760–431–9440 extension 215.

SUPPLEMENTARY INFORMATION: Several Federal, state, and local agencies, and citizen groups are jointly proposing a project to restore approximately 200 acres (81 hectares) of wetland habitant at Buena Vista Lagoon. Historically (e.g., pre-1940s), the lagoon was in a dynamic equilibrium between a tidal-influenced saltwater system during dry conditions and a river-influenced freshwater system during wet weather. Over time, the lagoon has been converted to a freshwater system as a result of highway, roadway, and railroad construction and installation of a weir. Buena Vista Lagoon has been progressively degrading in terms of its value to biological communities, habitats, and human uses. Without restoration, it would most likely become a vegetated freshwater marsh or riparian woodland-meadow within the next 30 to 50 years. This degradation would reduce or eliminate wetland functions

and values, and result in greater concerns about mosquitoes, water quality impairment, and impacts to aesthetic resources. Creation of a predominantly saltwater regime would be achieved through elimination and disposal of existing freshwater vegetation (principally cattails), dredging and disposal to remove excess sediment (up to approximately 2 million cubic yards), and establishment of continuous tidal exchange through an ocean inlet/outlet. Dredging would create elevations for intertidal salt marsh and eelgrass habitats. An existing 50-foot wide weir would be removed and an open channel would be constructed to provide continuous tidal exchange between the lagoon and the Pacific Ocean. Depending on the final distribution of habitats to be created and inlet maintenance considerations, the ocean inlet/outlet may require stabilization with one or two jetties of similar length to those constructed farther south in the City of Carlsbad for the Batiquitos Lagoon inlet/outlet. Various scenarios of habitat creation and lagoon flow characteristics would influence which potential infrastructure modifications may be considered for the three action alternatives. Potential modifications may include changes to the existing bridges over the lagoon for U.S. Interstate 5 (I–5), a railroad, and Carlsbad Boulevard (''Coast Highway''), along with culverts and/or a weir.

Guidelines under the National Environmental Policy Act (NEPA) (40 CFR 1502.14[a]) and the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000–21177) require that an EIR and a EIS examine alternatives to a project in order to explore a reasonable range of alternatives that fulfill the project's purpose, while reducing potentially significant environmental impacts. A series of Technical Advisory Committee (TAC) meetings and informal public meetings/workshops were held over the past few years to solicit input on the development of project alternatives. Three public meetings were held between June 2002 and April 2004 with the last meeting held on April 8, 2004. Further, a comprehensive Feasibility Analysis funded by the SCC was completed in 2004 by Everest International Consultants, Inc. This analysis documented the general engineering feasibility and associated potential environmental impacts and considerations for a full range of hydrologic regimes and alternatives. Based on this analysis and input from the public and the TAC, alternatives that will receive detailed analysis in the DEIR/DEIS, are: (a) Proposed Action; (b) Restore and Enhance the Existing Freshwater Regime; (c) Create a Mixed Saltwater-Freshwater Regime; and (d) No Project/No Acton.

The alternative to Restore and Enhance the Existing Freshwater Regime would focus on elimination and disposal of some existing freshwater vegetation to help restore flow conditions, and dredging and disposal to remove excess sediment necessary for creation of freshwater habitat and two islands to provide riparian forest and fringing upland habitat. Additionally, channel enhancement would be provided to improve water flow and circulation, and the existing 50-foot wide weir would be replaced with a larger-width weir at the ocean outlet. No structural modifications would occur to the existing I–5, railroad, or Coast Highway crossings over the lagoon.

The alternative to Create a Mixed Saltwater-Freshwater Regime would focus on elimination and disposal of some existing freshwater vegetation to help restore flow conditions, dredging and disposal to remove excess sediment necessary for creation of saltwater habitat and eelgrass habitat west of I–5, and shallow freshwater habitat east of I–5. The existing weir would be replaced with an ocean inlet/outlet to provide continuous tidal exchange between the western portion of the lagoon and the ocean, and a new weir would be constructed under I–5 to maintain a freshwater basin east of the freeway. As noted for the proposed action, the ocean inlet/outlet may require stabilization with one or two jetties, and various scenarios of habitat creation and lagoon flow characteristics would influence considerations for modifying lagoon crossings to optimize tidal exchange, such as related to I–5, railroad, and Coast Highway bridges.

The No Project/No Action alternative would not involve any restoration or enhancement of the lagoon.

Written comments from interested parties are welcome to ensure that issues of public concern related to the proposed action are identified. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above). Comments will also be accepted at the public scoping meting (see **DATES**).

Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or homes addresses, etc., but if you wish is to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality regulations (40 CFR parts 1500–1518), other applicable Federal laws and regulations, and applicable policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the DEIR/DEIS.

Dated: March 14, 2007.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 07–1373 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service, we, our), announces a meeting of the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup's purpose is to provide, in an advisory capacity, recommendations and advice on research and implementation of sea lamprey control techniques alternative to lampricide that are technically feasible, cost effective, and environmentally safe. The primary objective of the meeting will be to discuss potential focus research initiatives that may enhance alternative sea lamprey control techniques. The meeting is open to the public.

DATES: The Lake Champlain Sea Lamprey Control Alternatives

Workgroup will meet on Monday, April 16, 2007, from 12 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the State University of New York, Valcour Educational Conference Center, 3712 Route 9—Lakeshore, Plattsburgh, NY 12901.

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Designated Federal Officer, Lake Champlain Sea Lamprey Control Alternatives Workgroup, Lake Champlain Fish and Wildlife Resources Office, U.S. Fish and Wildlife Service, 11 Lincoln Street, Essex Junction, VT 05452, at 802–872–0629 (telephone); *Dave_Tilton@fws.gov* (electronic mail).

SUPPLEMENTARY INFORMATION: We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). The Workgroup's specific responsibilities are to provide advice regarding the implementation of sea lamprey control methods alternative to lampricides, to recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed and funded by State and Federal agencies, and to assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

Dated: March 13, 2007.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. E7–5140 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0137

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by April 20, 2007.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0137), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0137 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW, ATTN: Bureau Information Collection Clearance Office (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Serice (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On June 9, 2006, the BLM published a notice in the **Federal Register** (71 FR 33479) requesting comments on the information collection. The comment period closed on August 8, 2006. The BLM did not receive any comments.

We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Onshore Oil and Gas Operation (43 CFR part 3160 through 3165).

OMB Control Number: 1004–0137.

Abstract: The BLM manages the exploration, development, production, and utilization of oil and gas operations on public lands according to the regulations at (43 CFR part 3160 through 3165). These regulations implement the following statutes:

(1) The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. *et seq*);

(2) The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*);

(3) The Act of Augsut 7, 1947 (Mineral Leasing Act of Acquired Lands) (30 U.S.C. 351–359); and

(4) The National Environmental Policy Act of 1969. The BLM uses this information to approve oil and gas operations. In most cases, we do not require a specific form to collect the required information, since we generally gather the information through the course of industry operations.

Burden Estimate Per Form: We estimate the completion time for this form and non-form information that is submitted quarterly, monthly, on occasion, and annually to the BLM by the private sector as follows:

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours
(a) Application for Permit to Drill (Form 3160–3)	5,000	8	40,000
(b) Well Completion or Re-completion Report and Log (Form 3160–4)	3,000	8	24,000
(c) Sundry Notices and Reports on Wells (Form 3160–5)	34,000	8	272,000
(d) 43 CFR 3162.3–1(a); Well Spacing Program	150	8	1,200
(e) 43 CFR 3162.3–1(e); Drilling Plans	2,875	16	46,000
(f) 43 CFR 3162.3–4(a); Plug and Abandon for Water Injection	1,200	8	9,600
(g) 43 CFR 3162.3–4(b); Plug and Abandon for Water Source	1,200	8	9,600
(h) 43 CFR 3162.4–1(a) and 3162.7–5(d)(1); Schematic/Facility Diagrams	2,350	8	18,800
(i) 43 CFR 3162.4–2(a); Drilling Tests, Logs, Surveys	330	8	2,640
(j) 43 CFR 3162.4–3; Monthly report of operations	90,000	8	720,000
(k) 43 CFR 3162.5–1(b); Disposal of Produced Water	1,500	8	12,000
(l) 43 CFR 3162.5–1(c); Report of Spills, Discharges, or Other Undesirable Events	200	8	1,600
(m) 43 CFR 3162.5–1(d); Contingency Plan	50	32	1,600

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours
(n) 43 CFR 3162.5–2(b); Direction Drilling	165	8	1,320
(o) 43 CFR 3162.6; Well Markers	300	8	2,400
(p) 43 CFR 3162.7–1(b); Approval and Reporting Oil in Pits	520	8	4,160
(q) 43 CFR 3162.7–1(d); Additional Gas Flaring	400	8	3,200
(r) 43 CFR 3162.7–5(b); Records for Seals	90,000	8	720,000
(s) 43 CFR 3162.7–5(c); Site Security	2,415	8	19,320
(t) 43 CFR 3164.1; Prepare Run Tickets	90,000	8	720,000
(u) 43 CFR 3165.1(a); Application for Suspension	100	16	1,600
(v) 43 CFR 3165.3(b); State Director Review	10	8	80
Totals	325,765	.....	2,631,120

Annual Responses: 325,765.
Application Fee Per Response: 0.
Annual Burden Hours: 2,631,120.

Dated: March 15, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–1361 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–JH–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0019

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by April 20, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0019), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0019 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On June 21, 2006, the BLM published a notice in the **Federal Register** (71 FR 35697) requesting comments on the information collection. The comment period closed on August 21, 2006. The BLM did not receive any comments.

We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Grazing Management (43 CFR subpart 4120).

OMB Control Number: 1004–0019.

Abstract: The BLM manages the grazing use program on public lands according to the regulations at (43 CFR subpart 4120). These regulations implement the following statutes:

(1) The Taylor Grazing Act of 1934 (43 U.S.C. 315–316o), as amended;

(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1782);

(3) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901–1908).

The BLM uses this information to approve grazing operations on public lands.

Burden Estimate per Form: We estimate the completion time for this form and non-form information that is submitted quarterly, monthly, on occasion, and annually to the BLM by the private sector as follows:

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours
(a) Cooperative Range Improvement Agreement (Form 4120–6) and related non-form information in 43 CFR part 4120	693	6	4,158
(b) Range Improvement Permit (Form 4120–7) and related non-form information in 43 CFR part 4120	19	10	190
Totals	712	.....	4,348

Annual Responses: 712.
Application Fee per Response: 0.
Annual Burden Hours: 4,348.

Dated: March 15, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief, Regulatory Affairs.

[FR Doc. 07–1362 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0132

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by April 20, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0132), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0132 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On June 21, 2006, the BLM published a notice in the **FEDERAL REGISTER** (17 FR 35695) requesting comments on the information collection. The comment period closed on August 21, 2006. The BLM did not receive any comments.

We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Geothermal Resource Leasing (43 CFR part 3200 through 3287).

OMB Control Number: 1004–0132.

Abstract: The BLM manages the leasing and development of geothermal resources under the regulations at (43 CFR part 3200 through 3287). These regulations implement the following statutes:

(1) The Energy Policy Act of 2005 (Pub. L. 109–58);

(2) The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*);

(3) The Geothermal Steam Act of 1970 (30 U.S.C. 1001–1028), as amended;

(4) The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands) (30 U.S.C. 351–359);

(5) The Department of the Interior Appropriations Act of 1981 (42 U.S.C. 6508);

(6) The Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41);

(7) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*) provides the authority for leasing lands acquired from the General Services Administration; and

(8) The National Environmental Policy Act of 1969. The BLM uses this information to approve lease activities for geothermal resources and unit agreements, process nominations for geothermal lease sales, and monitor compliance with granted approvals. In most cases, we do not require a specific form to collect the required resource and environmental information, since we generally gather the information through the course of industry operations.

Burden Estimate per Form: We estimate the completion time for this form and non-form information that is submitted quarterly, monthly, on occasion, and annually to the BLM by the private sector as follows:

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours
(a) Geothermal Sundry Notice (Form 3260–3)	100	8	800
(b) Notice of Intent to Conduct Geothermal Resource Exploration Operations (Form 3200–9)	12	8	96
(c) Geothermal Drilling Permit (Form 3260–2)	12	8	96
(d) Geothermal Well Completion Report (Form 3260–4)	12	8	96
(e) 43 CFR subpart 3202; Lessee Qualifications	79	1	79
(f) 43 CFR subpart 3203; Competitive Leasing	300	20	6,000
(g) 43 CFR subpart 3204; Noncompetitive Leasing	50	40	200
(h) 43 CFR subpart 3205; Direct Use Leasing	10	10	100
(i) 43 CFR subpart 3206; Lease Issuance	300	1	300
(j) 43 CFR subpart 3207; Lease Terms and Extension	50	1	50
(k) 43 CFR subpart 3210	50	1	50
(l) 43 CFR subpart 3211; Fees	300	1	300
(m) 43 CFR subpart 3212; Lease Suspensions and Royalty Rate Reductions	10	40	400
(n) 43 CFR subpart 3213; Relinquishment, Termination, and Cancellation	10	40	400
(o) 43 CFR subpart 3214; Bonds	10	4	40
(p) 43 CFR subpart 3215; Replacement Bonds	10	4	40
(q) 43 CFR subpart 3216; Transfers	30	60	180
(r) 43 CFR subpart 3217; Cooperative Agreements	10	40	400
(s) 43 CFR subpart 3251; Exploration Operations	12	8	96
(t) 43 CFR subpart 3252; Conducting Exploration Operations	100	8	800

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours
(u) 43 CFR subpart 3253; Reports: Exploration Operations	12	8	96
(v) 43 CFR subpart 3256; Exploration Operations Relief and Appeals	10	8	80
(w) 43 CFR subpart 3261; Drilling Operations	12	8	96
(x) 43 CFR subpart 3264; Reports-Drillings Operations/Recordkeeping	12	10	120
(y) 43 CFR subpart 3272; Utilization Plans and Facility Construction Permits	10	10	100
(z) 43 CFR subpart 3273; Site License	10	10	100
(aa) 43 CFR subpart 3274; Commercial Use Permit	10	10	100
(bb) 43 CFR subpart 3276; Reports Utilization Operations	10	10	100
(cc) 43 CFR subpart 3281; Unit Agreements	10	10	100
(dd) 43 CFR subpart 3282; Participating Area	10	10	100
(ee) 43 CFR subpart 3283; Unit Agreement Modifications	10	10	100
Totals	1,447	.....	10,137

Annual Responses: 1,447.
Application Fee per Response: 0.
Annual Burden Hours: 10,137

Dated: March 15, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–1363 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–84 M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, June 7 and 8, 2007, in Fortuna, California. On June 7, the council will convene at 10 a.m. at the River Lodge Meeting Center's ''Monday Club,'' 610 Main St., and depart for a field tour of public lands in the Headwaters Forest Reserve. On June 8, the council convenes at 8 a.m. at the Monday Club. The council will hear public comments at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, BLM Arcata Field Office manager, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics include a discussion of field office uses of Land and Water Conservation Fund allocations, a discussion of royalty receipts in the BLM geothermal energy program, a review of minerals management and products produced by each field office, an update on the Cow Mountain Management Plan, status report on the BLM Managing for Excellence Initiative, a report on development of the Lack's Creek Management Plan, and an update on the Sacramento River Bend Area of Critical Environmental Concern. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: March 14, 2007.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E7–5071 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–936–1310–07; HAG–07–0086; WAOR60869]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WAOR60869; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Meany Land & Exploration, Inc., for competitive oil and gas lease WAOR60869 for lands in Yakima County, Washington. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, Land Law Examiner, Minerals Section, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208, (503) 808–6162.

SUPPLEMENTARY INFORMATION: The lessee, Meany Land & Exploration, Inc., has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Therefore, the Bureau of Land Management is proposing to reinstate lease WAOR60869, effective October 1, 2006, subject to the original terms and conditions of the lease and

the increased rental and royalty rates cited above. No other valid lease has been issued affecting the lands.

Patrick H. Geehan,

Chief, Minerals Section.

[FR Doc. E7–5155 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alternative Energy and Alternate Use Program

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability (NOA) of the Draft Programmatic Environmental Impact Statement (EIS) and Public Hearings.

SUMMARY: The Minerals Management Service (MMS) has prepared a draft programmatic environmental impact statement (EIS) in support of the proposed Alternative Energy and Alternate Use Program and associated rulemaking authorized under Section 388 of the Energy Policy Act of 2005, and codified as new subsection 8(p) of the Outer Continental Shelf Lands Act. Pursuant to the regulations implementing the National Environmental Policy Act (NEPA), the Minerals Management Service (MMS) is announcing the availability of a draft programmatic EIS for the Alternative Energy and Alternate Use (AEAU) Program and Rule. The programmatic EIS analysis focuses on the potential environmental effects of implementing the AEAU program and associated rulemaking and also analyzes alternatives to implementing the AEAU program and rule, including the ''no action'' alternative.

Authority: This NOA and notice of public hearings is published pursuant to the regulations (40 CFR 1506.6) implementing the provisions of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

SUPPLEMENTARY INFORMATION: Section 388 of the Energy Policy Act of 2005 (EPAct), granted the Department of the Interior (Department) discretionary authority to issue leases, easements, or rights-of-way for activities on the OCS that produce or support production, transportation, or transmission of energy from sources other than oil and gas, and are not otherwise authorized by other applicable law. The Department delegated this authority to the MMS. Examples of the general types of alternative energy project activities that MMS has the discretion to authorize include, but are not limited to: wind energy, wave energy, ocean current energy, solar energy, and hydrogen production.

The MMS was also delegated discretionary authority to issue leases, easements, or rights-of-way for other OCS project activities that make alternate use of existing OCS facilities for ''energy-related purposes or for other authorized marine-related purposes,'' to the extent such activities are not otherwise authorized by other applicable law. Such activities may include, but are not limited to: offshore aquaculture, research, education, recreation, and support for offshore operations and facilities.

A new program within MMS is being proposed to oversee these potential activities on the OCS. To satisfy the requirements of the NEPA in the establishment of an AEAU program and rules on the OCS, the MMS prepared a draft programmatic EIS. The proposed action is the implementation of the AEAU program and rules in areas not excluded by Section 388 of the EPAct. The programmatic EIS focuses on generic impacts from each industry sector based on global knowledge and identifies key issues that subsequent, site-specific assessments should consider. Projections for industry activities are limited in the EIS to those anticipated to be pursued within the next 5–7 years. The programmatic EIS also addresses AEAU technology testing and site characterization. Subsequent NEPA documents prepared for site-specific AEAU projects may tier to this programmatic EIS and the Record of Decision.

The primary objectives of the programmatic EIS are to analyze and document the potential environmental, social-cultural, and economic considerations associated with the establishment of an OCS AEAU program and rules, including all foreseeable, potential monitoring, testing, construction, commercial development, operations, and decommissioning activities on the OCS. The programmatic EIS process:

(1) Provides for public input concerning the scope of national issues associated with offshore alternate energy-related use activities;

(2) Identifies, defines, and assesses generic environmental, socio-cultural, and economic impacts associated with offshore alternate energy-related use activities;

(3) Evaluates and establishes effective mitigation measures to avoid, minimize, or compensate for potential impacts; and

(4) Facilitates future preparation of site-specific NEPA documents; subsequent NEPA documents prepared for site-specific AEAU projects may tier to the Programmatic EIS and Record of Decision.

EIS Availability: To obtain a single, printed or CD–ROM copy of the draft EIS, you may contact the Minerals Management Service, Environmental Assessment Branch Office (MS 4042), 381 Elden Street, Herndon, Virginia 20170. An electronic copy of the draft EIS is available at the MMS's Internet Web site at *http://ocsenergy.anl.gov/.*

Public Hearings: The MMS will hold public hearings to receive comments on the draft EIS. The public hearings are scheduled as follows:

- Monday, April 16, 2007, Main Interior Building, 1849 C Street NW., Washington, DC, 10 a.m.
- Tuesday, April 24, 2007, Monmouth University, 400 Cedar Avenue, West Long Branch, New Jersey, 7 p.m.
- Wednesday, April 25, 2007, Melville Marriott, 1350 Old Walt Whitman Road, Melville, New York, 7 p.m.
- Thursday, April 26, 2007, Marriott Boston Newton, 2345 Commonwealth Avenue, Newton, Massachusetts, 7 p.m.
- Tuesday, May 1, 2007, Houston Airport Marriott, 18700 John F. Kennedy Blvd, Houston, Texas, 7 p.m.
- Tuesday, May 1, 2007, The Presidio, 135 Fisher Loop, San Francisco, California, 7 p.m.
- Wednesday, May 2, 2007, Residence Inn and Courtyard North Harbour, 1250 N. Anchor Way, Portland, Oregon, 7 p.m.
- Wednesday, May 2, 2007, Holiday Inn Miami International Airport, 1111 South Royal Poinciana Blvd, Miami Springs, Florida, 7 p.m.
- Thursday, May 3, 2007, Courtyard by Marriott Charleston, 35 Lockwood Drive, Charleston, South Carolina, 7 p.m.

If you wish to testify at a hearing, you should register one hour prior to the meeting. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearings, you may submit written statements.

Comments: Federal, state, local government agencies, and other interested parties are requested to send their written comments on the draft EIS in one of the following three ways:

1. Electronically using MMS's on-line commenting system at *http://ocsenergy.anl.gov/.* This is the preferred method for commenting.

2. In written form, mailed or delivered to MMS Alternative Energy and

Alternate Use Programmatic EIS, Argonne National Laboratory, EVS/900, 9700 S. Cass Avenue, Argonne, IL 60439.

3. In person at the public hearings.

Comments should be submitted no later than 60 days from the publication of this notice.

Public Comment Policy: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Mr. James F. Bennett, Environmental Assessment Branch, MS 4042, 381 Elden Street, Herndon, Virginia 20710, (703) 787–1660.

Dated: February 26, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–5158 Filed 3–20–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of Concession Contract

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

DATES: *Effective Date:* April 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

SUMMARY: Pursuant to the terms of the existing contract, public notice is hereby given that the National Park Service intends to continue the following expiring concession contract until October 1, 2007, or until such time as a new contract is effective, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession contract will expire by its terms on March 31, 2007. The National Park Service has determined that the proposed short-term continuation is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Concession contract No.	Concessioner name	Park
STLI001–89	Circle Line—Statue of Liberty Ferry, Inc.	Statue of Liberty National Monument/Ellis Island.

Dated: March 14, 2007.

Katherine H. Stevenson,

Acting Assistant Director, Business Services.

[FR Doc. 07–1370 Filed 3–20–07; 8:45 am]

BILLING CODE 4312–50–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 21, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14–22 when the first round of interviews began in 1979; they will be ages 43 to 50 when the planned twenty-third round of interviews is conducted from January 2008 to January 2009. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986, when the National Institute of Child Health and Human Development began providing funding to the BLS to gather a large amount of information about the lives of these children. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, and self-esteem, as well as sensitive topics addressed in a supplemental, self-administered questionnaire.

The BLS contracts with the Center for Human Resource Research (CHRR) of the Ohio State University to implement the NLSY79, Child, and Young Adult surveys. Interviewing of respondents is conducted by the National Opinion Research Center (NORC) of the University of Chicago. Among the objectives of the Department of Labor (DOL) are to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. The BLS contributes to these objectives by gathering information about the labor

force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed and, thus, more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of intergenerational information for these important population groups. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policy makers, and the DOL would not have the data for use in performing its policy and report-making activities.

II. Current Action

The BLS seeks approval to conduct the round 23 interviews of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents. The NLSY79 Child Survey involves three components:

- The Mother Supplement is administered to female NLSY79 respondents who live with biological children under age 15. This questionnaire will be administered to about 1,300 women, who will be asked a series of questions about each child under age 15. On average, these women each have about 1.3 children under age 15, for a total number of approximately 1,650 children.
- The Child Supplement involves aptitude testing of about 1,450 children under age 15.
- The Child Self-Administered Questionnaire is administered to approximately 900 children ages 10 to 14.

In addition to the main NLSY79 and Child Survey, the Young Adult Survey will be administered to approximately 2,165 youths ages 15 to 20 who are the biological children of female NLSY79 respondents. These youths will be contacted for an interview regardless of whether they reside with their mothers.

During the field period, about 200 main NLSY79 interviews are validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

BLS has undertaken a continuing redesign effort to examine the current content of the NLSY79 and provide direction for changes that may be appropriate as the respondents enter middle age. Based on the 1998 redesign conference and subsequent discussions, as well as experiences in 2000–2006, the 2008 instrument reflects a number of content changes recommended by experts in various social science fields and by an internal review of the survey's content. A full list of the proposed changes to the questionnaire are available upon request. Additions to the questionnaire have been balanced by deletions of previous questions so that the overall time required to complete the survey should remain about the same.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
NLSY79 Round 21 Pretest	100	Biennially	100	60	100
Main NLSY79 Survey	7,550	Biennially	7,550	60	7,550
Main NLSY79 Validation Reinterview	200	Biennially	200	6	20
Mother Supplement	[1] 1,300	Biennially	1,650	20	550
Child Supplement	1,450	Biennially	1,450	31	750
Child Self-Administered Questionnaire	900	Biennially	900	30	450
Young Adult Survey	2,165	Biennially	2,165	45	1,624
Total [2]	11,265		14,015		11,044

[1] The number of respondents for the Mother Supplement (1,300) is less than the number of responses (1,650) because mothers are asked to provide separate responses for each of the biological children with whom they reside. Since the Mother Supplement is given to children ages 0–14, the number of responses is greater than the Children's Supplement, which is only given to children ages 4–14 years.

[2] The total number of 11,265 respondents across all the survey instruments is a mutually exclusive count that does not include: (1) the 200 re-interview respondents, who were previously counted among the 7,550 main survey respondents, (2) the 1,300 Mother Supplement respondents, who were previously counted among the main youth, and (3) the 900 Child SAQ respondents, who were previously counted among the 1,450 Child Supplement respondents.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of March 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–5121 Filed 3–20–07; 8:45 am]

BILLING CODE 4510–24–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting; Notice

March 12, 2007.

TIME AND DATE: 10 a.m., Thursday, March 22, 2007.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *United Mine Workers of America on behalf of Local 1248, District 2* v. *Maple Creek Mining, Inc.*, Docket No. PENN 2002–23–C. (Issues include whether the Administrative Law Judge erred in denying the operator's motion for summary decision on the ground that a withdrawal order issued to the operator pursuant to section 104(b) of the Mine Act could not be contested pursuant to section 105(a), and thus became final for purposes of the compensation provisions of section 111 when it was not contested under section 105(d) within 30 days of its issuance.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen; (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 07–1401 Filed 3–19–07; 11:54 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–025)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA-sponsored Classroom of the Future (COTF) will conduct numerous studies on identifying and assessing learning and tracking flow in video. Though the methodology in each study may differ somewhat, the purpose of each collection is similar. Without basic research into assessment of learning in games, NASA Education will have no measurement of how much learning occurs in the games they develop. NASA will use this research to inform its investment in developing educational video games to support increased achievement in science, technology, engineering and mathematics education.

II. Method of Collection

Most of the data collection will be online using Web-based database technologies. Many of the pre- and post-test questions that will be asked in focus groups and face-to-face interviews will have responses compiled on-line to aid research efforts. Almost all the data collected will be acquired through software that tracks user skill and flow in games.

III. Data

Title: Generic Clearance for Studies to Assess Learning and Flow in Video Games.

OMB Number: 2700–XXXX.

Type of Review: Emergency New Collection.

Affected Public: Individuals or households; Business or other for profit; or Not-for-profit institutions.

Number of Respondents: 7764.

Responses per Respondent: 1.

Annual Responses: 2608.

Annual Burden Hours: 3505.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–5103 Filed 3–20–07; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 040–07455]

Notice of Consideration of Amendment Request for Approval of the Decommissioning Plan for the Whittaker Corporation's Waste and Slag Storage Area in Transfer, PA and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by May 21, 2007.

FOR FURTHER INFORMATION CONTACT: James Kottan, Project Manager, Decommissioning Branch, Division of

Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406. Telephone: (610) 337–5214; fax number: (610) 337–5269; or e-mail: *jjk@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMA–1018, issued to the Whittaker Corporation (the licensee), to authorize decommissioning of its Waste and Slag Storage Area in Transfer, Pennsylvania as described in the licensee's Decommissioning Plan (DP).

The Whittaker Waste and Slag Storage Area is located in the Reynolds Industrial Park in Transfer, Pennsylvania. The storage area is approximately six acres in size and was built up over time through the repeated disposal of foundry slag, scrap metal, building rubble, and debris from metal extraction operations. The Whittaker Corporation, as well as prior owners of the site, used source material containing licensable quantities of thorium and uranium for the extraction of rare earth metals. These operations resulted in slag by products containing thorium and uranium. Materials processing took place at the site from 1966 to 1974.

The licensee has been decommissioning the Transfer, Pennsylvania Site in accordance with the conditions described in License No. SMA–1018. This has included the excavation of the waste slag, processing the excavated material in order to separate the radioactive material from the soil, and shipping the radioactive material to a licensed disposal site. The licensee has submitted to the NRC a DP incorporating the dose-based criteria of 10 CFR 20, subpart E, Radiological Criteria for License Termination, for release of the site for unrestricted use. An NRC administrative review, documented in a letter to the Whittaker Corporation dated February 14, 2007, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SMA–1018. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. If this amendment is approved, the license will be terminated following completion of decommissioning activities and verification by the NRC that the radiological criteria for license termination have been met.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding decommissioning of the Whittaker Waste and Slag Storage Area located in Transfer, Pennsylvania. In accordance with the general requirements in Subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. *First class mail addressed to:* Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. *Courier, express mail, and expedited delivery services:* Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Whittaker Corporation, 1955 N. Surveyor Avenue, Simi Valley, CA 93063–3386, Attention: Eric Lardiere, Vice President, General Counsel and Secretary, and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by May 21, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with

the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. *Environmental*—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. *Emergency Planning*—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. *Physical Security*—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. *Miscellaneous*—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRCs Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Decommissioning Plan	ML070120462
Inspection Report 040–07455/2006–001	ML062640473
Annual Site Groundwater Monitoring Report for 2006	ML070470152
DP Acceptance Letter	ML070510307

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 14th day of March, 2007.

For The Nuclear Regulatory Commission.

Samuel Hansell,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–5149 Filed 3–20–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 5–7, 2007, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 15, 2006 (71 FR 66561).

Thursday, April 5, 2007, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)–The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Human Reliability Analysis Models (Open)–The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Electric Power Research Institute regarding staff's and industry's plans for evaluating different human reliability analysis models in an effort to propose either a single model for the NRC to use or guidance on which models should be used in specific circumstances.

10:45 a.m.–12:15 p.m.: Proposed Revisions to Standard Review Plan (SRP) Section 4.2, Reactor Fuels (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to SRP Section 4.2, Reactor Fuels, and related matters.

1:45 p.m.–3:15 p.m.: Risk-Management Technical Specification Initiative 4b—Flexible Completion Times (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Risk-Management Technical Specification Initiative 4b—Flexible Completion Times, and related matters.

3:30 p.m.–4:30 p.m.: ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the proposed format, content, and assignments for the ACRS report to the Commission on the NRC Safety Research Program.

4:30 p.m.–4:45 p.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the ACRS Subcommittee on Plant License Renewal regarding interim review of the license renewal application for the Pilgrim

Nuclear Plant.

5 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss proposed reports on revision to 10 CFR 50.46 LOCA criteria for fuel cladding materials and response to Commission SRM regarding development of a technology-neutral framework for future plant designs.

Friday, April 6, 2007, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Future ACRS Activities/ Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

9:30 a.m.–9:45 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10 a.m.–11:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

1:30 p.m.–2:30 p.m.: Meeting with Commissioner Jaczko (Open)—The Committee will meet with Commissioner Jaczko to discuss items of mutual interest.

2:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Saturday, April 7, 2007, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 2006 (71 FR 58015). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS), which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *ttp://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/ agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 15, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–5151 Filed 3–20–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Revisions to NUREG/BR–0006 and NUREG/BR–0007

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing revisions to NUREG/BR–0006, ''Instructions for the Preparation and Distribution of Material Transaction Reports.'' *http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0006/* and NUREG/BR–0007, ''Instructions for the Preparation and Distribution of Material Status Reports.'' *http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0007/* The purpose of these revisions are to incorporate (1) proposed rule changes for nuclear material reporting requirements, (2) upgrades to the Nuclear Material Management and Safeguards System, and (3) editorial changes. The NRC is seeking comment from interested parties on the clarity of the proposed revisions and will consider the comments received in its final evaluation of the NUREGs. Comments should address the contents of the guidance presented in the NUREGs but not the regulations associated with it.

DATES: Comment period expires April 23, 2007. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Brian Horn at (301) 415–8128 or by e-mail to *bgh1@nrc.gov* or Chris Graves at (301) 415–6525 or by e-mail to *dcg@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of March, 2007.

Jane Marshall,

Chief, Material Control and Accounting Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–5150 Filed 3–20–07; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes To Close March 14, 2007, Meeting

At its teleconference meeting on March 6, 2007, the Board of Governors of the United States Postal Service noted unanimously to close to public observation its meeting scheduled for March 14, 2007, in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

Item Considered

Postal Regulatory Commission Opinion and Recommended Decision in Docket No. R2006–1, Postal Rate and Fee Changes.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information: Requests for information about the meeting should be addressed to the Secretary of the Board, Wendy A. Hocking, at (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–1395 Filed 3–16–07; 4:50 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to the following collection of information: 3220–0039, RUIA Applications, consisting of RRB Form(s) S1–1a, Application for Sickness Benefits; SI–1b, Statement of Sickness; SI–3, Claim for Sickness Benefits; SI–7, Supplemental Doctor's Statement; SI–8, Verification of Medical Information; ID–7h, Non-Entitlement to Sickness Benefits; ID–11a, Requesting Reason for Late Filing of Sickness Benefit; and ID–11b, Notice of Insufficient Medical and Late Filing. Our ICR describes the information we seek to collect from the public. Completion is required to obtain or retain benefits. One response is required of each respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (71 FR No. 236 Pages 71198–71199 on December 8, 2006) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Unemployment Insurance Act Applications.

OMB Control Number: 3220–0039.

Form(s) submitted: SI–1a, SI–1b, SI–3, SI–7, SI–8, ID–7H, ID–11A, ID–11B,

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households, Business or other for-profit.

Abstract: Under Section 2 of the Railroad Unemployment Insurance Act, sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. The collection obtains information from employees and physicians needed to determine eligibility to and the amount of such benefits.

Changes Proposed: The RRB proposes changes to Form ID–11A and ID–11B to add an item requesting clarifying information regarding why a claimant filed their claim late. A minor non-burden impacting change is proposed to Form S1–1a. No changes are proposed to Form(s) SI–1b, SI–3, SI–7, SI–8 and ID–7H.

The burden estimate for this ICR is unchanged as follows:

Estimated annual number of respondents: 44,600.

Total annual responses: 248,900.

Total annual reporting hours: 25,351.

For Further Information Contact: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@RRB.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–5154 Filed 3–20–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission; Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 15a–5; SEC File No. 270–527; OMB Control No. 3235–0587.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 15(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–15(a)) (the ''Investment Company Act'' or ''Act'') prohibits any person from serving as an investment adviser (or a subadviser) to a fund except under a written contract that the fund's shareholders have approved. The Commission has granted exemptive relief, by order, to a number of registered open-end management investment companies (''funds'') whose investment advisers do not directly manage a portfolio of securities, but instead supervise one or more subadvisers, which are themselves responsible for the day-to-day management of the funds' portfolios (''manager of managers funds'').[1] Sponsors have analogized subadvisers in a manager of managers arrangement to portfolio managers employed by a fund adviser who may be hired and

[1] In this notice, we use the term ''subadviser'' to mean a party that contracts with a fund's principal adviser to provide investment advisory services to the fund, and the term ''principal adviser'' to mean a party that contracts directly with a fund to provide investment advisory services to the fund.

fired without the consent of shareholders.

Proposed Rule 15a–5 (17 CFR 270.15a–5) and amendments to Form N–1A (17 CFR 239.15A, 17 CFR 274.11A) together would codify the orders we have issued for manager of managers funds, including many of their conditions, allowing any fund that satisfies the conditions to enter into or materially amend a subadvisory contract without shareholder approval. To provide for the protection of fund shareholders, a fund that relied on the proposed rule would have to satisfy a number of conditions, some of which would result in information collection requirements.

For example, any fund that relied on the proposed rule would have to include certain provisions in all its advisory and subadvisory contracts. Specifically, all the fund's subadvisory contracts for which shareholder approval is not sought would have to provide the principal adviser with the authority to terminate the subadvisory contract at any time, on no more than 60 days written notice, without payment of penalty.[2] In addition, the advisory contract between each principal adviser and the fund would have to require that the principal adviser supervise the activities of its subadvisers. These provisions are intended to ensure that only manager of managers funds (in which subadvisers resemble and perform the duties of a portfolio manager in a typical fund) are eligible for relief under the proposed rule and to allow the principal adviser to carry out its principal duties to the fund, the selection and monitoring of subadvisers, in an efficient manner.

During the first year after adoption of the rule, Commission staff estimates that each fund relying on the rule would incur an initial one-time burden to modify its existing contract with the principal adviser to require the principal adviser to supervise the activities of its subadvisers. Staff estimates this burden would be 5 hours per fund (4 hours by in-house counsel, 0.5 hours by fund directors, 0.5 hours by support staff).[3] Commission staff estimates that 149 funds would have to modify their advisory contracts with their principal advisers to comply with the proposed rule, which would result in an estimated total of 745 burden hours and 149 responses.[4]

Commission staff estimates that after the first year, approximately 10 funds[5] would spend, on average, 5 hours annually (4 hours by in-house counsel, 0.5 hours by fund directors, 0.5 hours by support staff) to modify their advisory contracts with their principal advisers to comply with the proposed rule. Thus, the Commission estimates these modifications would result in a total of 50 burden hours and 10 responses.

The proposed rule also would require funds to provide shareholders (and file with the Commission) an information statement within 90 days after entry into the subadvisory contract or after making a material change to a wholly-owned subsidiary's existing subadvisory contract. The information statement must describe the agreement and contain all of the information that shareholders would have received in a proxy statement had a shareholder vote been held. This information collection is needed to ensure that shareholders are aware of the identity of the subadvisers that would be making investment decisions for the fund and the terms of each subadvisory contract.

During the first 3 years after adoption of the proposed rule, Commission staff estimates that 179 funds[6] would each spend 20 hours[7] annually in preparing and distributing information statements. The total annual estimate for complying with the third party disclosure requirement of rule 15a–5 would be 3580 burden hours and 358 responses.

To arrive at the total information collection burden, staff has calculated a weighted average of the first year burden and the annual burden thereafter. Using a three-year period, the estimated weighted annual average information collection burden is 3862 hours[8] and 414 responses.[9]

The collections of information required by proposed rule 15a–5 would be voluntary because rule 15a–5 is an exemptive rule and, therefore, funds may choose not to rely on the proposed rule. The filings with the Commission required under the proposed rule would be available to the public. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 13, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5057 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[2] Most subadvisory contracts already contain terms that allow the principal adviser to terminate the contract at any time. We therefore estimate there would be no burden hours or costs imposed on funds by this requirement.

[3] These estimates are based on discussions with fund representatives.

[4] These 149 funds include 125 funds that currently rely on exemptive orders, 14 funds that have filed an application for an exemptive order and, as explained infra note 5, 10 additional funds that we estimate would choose to rely on the proposed rule during the first year.

[5] Based on the number of manager of managers applications submitted since 1995, the staff estimates that 20 additional funds would seek to rely on the proposed rule each year. Approximately 10 of those funds would be funds whose securities have already been publicly offered, and therefore would need to modify their advisory contracts with principal advisers. We estimate that the 10 new funds that would rely on the proposed rule would incur no additional burden or costs to include these provisions in the initial advisory contract.

[6] Commission staff estimates that 159 funds (including 125 funds that currently rely on exemptive orders, 14 funds that have filed an application for an exemptive order, and 20 additional funds that would have filed for exemptive relief during the first year after the rule's adoption) would rely on the proposed rule during the first year after its adoption. After the first year, the staff estimates that each year 20 additional funds would rely on the proposed rule.

[7] Based on discussions with fund representatives, the Commission estimates that on average each fund would hire 2 new subadvisers per year. Therefore, funds would be required to send to shareholders 2 information statements per year. Based on discussions with fund representatives, the Commission estimates that each fund would spend 10 hours to prepare and mail each information statement.

[8] This estimate is based on the following calculation: (4325 hours (year 1) + 3630 hours (year 2) + 3630 hours (year 3)) 3 = 3861.6 hours.

[9] This estimate is based on the following calculation: (507 responses (year 1) + 368 responses (year 2) + 368 responses (year 3)) 3 = 414.3 responses.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–16; SEC File No. 270–363; OMB Control No. 3235–0413.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• **Rule 17Ad–16: Notice of Assumption or Termination of Transfer Agent Services**

Rule 17Ad–16 (17 CFR 240.17Ad–16) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), requires a registered transfer agent to provide written notice to the appropriate qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. In addition, transfer agents that provide such notice shall maintain such notice for a period of at least two years in an easily accessible place. This rule addresses the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

We estimate that the transfer agent industry submits 600 Rule 17Ad–16 notices to appropriate qualified registered securities depositories. The staff estimates that the average amount of time necessary to create and submit each notice is approximately 15 minutes per notice. Accordingly, the estimated total industry burden is 150 hours per year (15 minutes multiplied by 600 notices filed annually).

Because the information needed by transfer agents to properly notify the appropriate registered securities depository is readily available to them and the report is simple and straightforward, the cost is minimal. The average cost to prepare and send a notice is approximately $7.50 (15 minutes at $30 per hour). This yields an industry-wide cost estimate of $4,500 (600 notices multiplied by $7.50 per notice).

The retention period for the recordkeeping requirements under Rule 17Ad-16 is two years for both the clearing agencies and transfer agents. The recordkeeping requirement under Rule 17Ad-16 is mandatory to ensure accurate securityholder records, prompt and efficient clearance and settlement of securities transactions, and to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 15, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5136 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, March 21, 2007 at 2 p.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Wednesday, March 21, 2007 at 2 p.m. has been changed to Wednesday, March 21, 2007 at 1 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 16, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5131 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55454; File No. SR–OPRA–2007–01]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Adopt a Revised Form ''Third Party Billing Agreement''

March 13, 2007.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on February 23, 2007 the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment would adopt a revised form ''Third Party Billing Agreement.''

I. Description and Purpose of the Amendment

OPRA states that the purpose of the proposed amendment is to adopt a revised form ''Third Party Billing Agreement'' for use by a Professional Subscriber that has entered into a Professional Subscriber Agreement (''PSA'') with OPRA and that wishes to agree with a third party (''Third Party Payor'') that the Third Party Payor will be responsible for payment of OPRA's charges with respect to receipt by the Professional Subscriber of OPRA Information.

The revised form includes language that is intended to make it easier for a Professional Subscriber and Third Party Payor to conclude, in an appropriate

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc., the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

situation, that payment of OPRA's fees by the Third Party Payor is eligible for the safe harbor under Section 28(e) of the Act.[4] In particular, the revised form states expressly that OPRA will waive a Professional Subscriber's obligation under its PSA to pay OPRA's fees in consideration for the agreement of the Third Party Payor to pay fees directly to OPRA for the Professional Subscriber's receipt of OPRA Information.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraphs (b)(3) of Rule 608 under the Act,[5] OPRA designates this amendment as concerned solely with the administration of the OPRA Plan and/or as involving solely technical or ministerial matters, thereby qualifying for effectiveness upon filing.

OPRA states that it will begin to use the proposed revised form ''Third Party Billing Agreement'' upon filing with the Commission. However, OPRA states that these revised documents would be used only on a prospective basis. Existing Professional Subscribers and Third Party Payors that are parties to existing payment arrangements would not be required to execute the revised form. However, upon the request from a Professional Subscriber and Third Party Payor, OPRA will execute the revised form with respect to their existing payment arrangement if the Third Party Payor is current in its payments.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act[6] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OPRA–2007–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OPRA–2007–01. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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–OPRA–2007–01 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5086 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78bb.

[5] 17 CFR 242.608(b)(3).

[6] 17 CFR 242.608(b)(2).

[7] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55455; File No. SR–OPRA–2007–02]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Revise OPRA's Fee Schedule and its ''Policies With Respect to Device-Based Fees''

March 13, 2007.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on February 23, 2007 the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] Specifically, OPRA proposes to revise its Fee Schedule and its ''Policies with Respect to Device-Based Fees.''

I. Description and Purpose of the Amendment

A. Changes in the Fee Schedule

OPRA states that the purpose of the proposed amendment to its Fee Schedule is to eliminate language that became obsolete on January 1, 2007, and to provide a simplified and unified presentation of its Fee Schedule. None of the proposed revisions would change the amount of any of OPRA's fees.

Since January 1, 2007, OPRA has had in place a single $20.00 ''per device'' fee for its Basic Service (consisting of all OPRA Information except Information with respect to foreign currency options) and a single $5.00 per device fee for its FCO Service (consisting of OPRA Information with respect to foreign currency options).[4] As a result,

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc., the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

[4] The device-based fees that became effective on January 1, 2007 were first proposed in File No. SR–OPRA–2004–01, which became effective upon filing

Continued

OPRA proposes to delete two tables in its Fee Schedule and replace them with a single entry setting forth these device-based fees.

As shown in Exhibit I(B) to the proposed rule change, OPRA's Fee Schedule had two parts. The first part was called ''Professional Subscriber Fee Schedule,'' and it contained two tables listing device-based fees, one for OPRA's Basic Service and one for OPRA's FCO Service, and described OPRA's alternative Enterprise Rate fees for access to the Basic Service. The second part was called ''Fee Schedule,'' which set out OPRA's other fees, including fees applicable to Vendors as well as fees that were applicable to some Professional Subscribers.[5] The purpose of the two-part Fee Schedule was to accommodate the tables of device-based fees because they did not fit within the format of the second part of the Fee Schedule.

With the elimination of the device-based fee tables and their replacement with a single chart setting forth per device fees for the Basic Service and the FCO Service, the first part of the OPRA Fee Schedule can be deleted in its entirety, and the line in the second part of the Fee Schedule that formerly cross-referenced the device-based fees in the first part can be replaced with a line that states the actual device-based fees themselves.

A secondary purpose of the proposed amendment is to correct the description in the Fee Schedule of the ''Direct Access Fee'' to state that it is applicable to Professional Subscribers, as well as to Vendors, that receive OPRA Data directly from OPRA's processor.[6]

The remaining changes to the Fee Schedule are to accommodate the re-organization of the Fee Schedule and other non-substantive purposes. Specifically, the description of the terms of the ''30-day free trial'' for the Basic Service will be moved from the old first part of the Fee Schedule and incorporated into a new footnote 3. The description of the Enterprise Rate alternative fee for the Basic Service will be moved from the old first part of the Fee Schedule and incorporated into a new footnote 4.[7] The footnote currently shown as the first footnote 1 [8] in the Fee Schedule is being deleted because OPRA believes that with the simplified and unified presentation of the Fee Schedule it is no longer necessary to state specifically, with respect to device-based fees, that other fees may also be applicable for certain Professional Subscribers.

The text of the footnote currently shown as the second footnote 1 relates to the Enterprise Rate fee and is being incorporated in the new Enterprise Rate footnote, footnote 4. New footnote 2 is language that is also in the first paragraph of the ''Policies with Respect to Device-Based Fees'' and is intended to emphasize that Professional Subscribers may count ''User IDs'' as a surrogate for ''devices.'' Footnote 6 is being deleted because its language was identical to that of footnote 4, which will be renumbered as new footnote 6.

B. Changes in the Policies With Respect to Device-Based Fees

The changes in the ''Policies with Respect to Device-Based Fees'' are also for housekeeping purposes. The purpose of the change in the second paragraph of the Policies is to conform a reference to OPRA's Fee Schedule to the elimination of the first part of the Fee Schedule itself. The purpose of the changes in the subsection with the revised subtitle ''Contracting on behalf of Affiliates'' is to delete material that no longer has any meaning after OPRA's change to a flat per-device fee schedule as of January 1, 2007.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraphs (b)(3) of Rule 608 under the Act,[9] OPRA designates this amendment as concerned solely with the administration of the OPRA Plan and/or as involving solely technical or ministerial matters, thereby qualifying for effectiveness upon filing.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act [10] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OPRA–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OPRA–2007–02. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

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on February 25, 2004. *See* Securities Exchange Act Release No. 49382 (March 9, 2004), 69 FR 12377 (March 16, 2004). In that filing, OPRA amended its Fee Schedule to make incremental changes, over a four year period from 2004 through 2007, to its device-based fees to eliminate all distinctions in these fees based on a subscriber's status as a member or nonmember of an exchange that is a party to the OPRA Plan or on the subscriber's total number of OPRA-enabled devices.

[5] These are the Subscriber Indirect Access Fee, the Direct Access Fee and the Voice-Synthesized Market Data Service Fee.

[6] This fee is accurately described in OPRA's ''Direct Circuit Connection Rider,'' which a Professional Subscriber must sign in order to receive OPRA Data directly from OPRA's processor. *See* Securities Exchange Act Release No. 53753 (May 2, 2006), 71 FR 27296 (May 10, 2006) (SR–OPRA–2006–01).

[7] OPRA also made incremental changes, over the four year period from 2004 until 2007, to its Enterprise Rate fees. *See supra*, note 4. Language that described the Enterprise Rate fees that were in effect before January 1, 2007 is now being eliminated because it is obsolete.

[8] OPRA's Fee Schedule currently shows two footnotes numbered ''1.'' The numbering of the footnotes is being corrected in the revised Fee Schedule.

[9] 17 CFR 242.608(b)(3).

[10] 17 CFR 242.608(b)(2).

you wish to make available publicly. All submissions should refer to File Number SR–OPRA–2007–02 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5087 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55462; File No. SR–NYSE–2007–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Linkage Order Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2007, the New York Stock Exchange LLC (''NYSE'') 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 substantially by NYSE. NYSE submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fee (the ''Linkage Order Fee'') it charges its member organizations in connection with orders in equities executed in another market pursuant to the ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage'' (the ''Linkage Plan'').[6] As of March 5, 2007, the Linkage Order Fee for transactions routed to any other market will be $0.0025 per share. The Linkage Order Fee will not apply to transactions where a broker on the Exchange trading floor placed the related order.

The text of the proposed rule change is available on the NYSE's Web site at *http://www.nyse.com,* at NYSE and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Linkage Order fee is currently fixed at $0.000275 per share. As of March 5, 2007, the Linkage Order Fee for transactions routed to any other market will be $0.0025 per share. The Linkage Order Fee is the only transaction fee the Exchange charges its customers on transactions routed to other markets. These transactions are not subject to the Exchange's regular equity transaction fees. The Linkage Order Fee will not apply to transactions where a broker on the Exchange trading floor placed the related order. Instead, if routed to another market, such transactions will be billed at the Exchange's regular equity transaction fee rate. At the time of the Linkage Order Fee's adoption,[7] the Exchange stated that the Linkage Order Fee was intended to permit the Exchange to recover fees billed to Archipelago Securities LLC (''Archipelago Securities''), as the NYSE's Sponsoring Member, by other markets for orders executed pursuant to the Linkage Plan. The current Linkage Order Fee is set at the level of the NYSE's own equity transaction fee. However, as the Exchange is charged much higher fees than the current Linkage Order Fee in connection with most transactions routed to other markets, the current Linkage Order Fee is enabling the Exchange to recoup only a fraction of its routing costs.[8] The revised Linkage Order Fee is more closely related to the actual transaction fees charged to Archipelago Securities by such other markets and will enable the Exchange to recoup most of the transaction fees for which it is responsible in relation to transactions it routes to other markets through the Linkage.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities. The fee is intended to permit the Exchange to recover fees billed to Archipelago Securities, as a Sponsoring Member, by other markets for orders executed pursuant to the Linkage Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE 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

NYSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and

[11] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] NYSE stipulated the implementation date to be March 5, 2007.

[6] The Linkage Plan was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act. The purpose of the Linkage Plan is to enable the Plan Participants to act jointly in planning, developing, operating and regulating the NMS Linkage System electronically linking the Plan Participant Markets to one another, as described in the Linkage Plan. Following approval by the Commission, the Plan became operative on October 1, 2006. The Plan terminates on June 30, 2007; however, participants that wish to extend the term could agree to do so, subject to Commission approval. *See* Securities Exchange Act Release No. 54551 (Sept. 29, 2006), 71 FR 59148 (Oct. 6, 2006) (approving the Linkage Plan).

[7] *See* Securities Exchange Act Release No. 54727 (November 8, 2006); 71 FR 66820 (November 16, 2006) (SR–NYSE–2006–79).

[8] Archipelago Securities is billed by the destination markets for orders entered on the Exchange by entering firms but routed to other markets for execution. The Exchange assumed responsibility for fees paid by Archipelago Securities to Participant markets in its capacity as the Exchange's Sponsoring Member. *See id.*

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it establishes or changes a due, fee, or other charge imposed by the NYSE. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–18. 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 offices of NYSE. 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–NYSE–2007–18 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5117 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19b–4(f)(2).

[13] 13 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55458; File No. SR–Amex–2007–23]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Charges for Equities, ETFs, and Nasdaq UTP Securities

March 13, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the equities, Exchange Traded Funds and Trust Issued Receipts (''ETFs''), and Nasdaq UTP Fee Schedules (collectively, the ''Fee Schedule'') to modify transaction charges in equities, ETFs, and Nasdaq UTP securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted new transaction charges for its members and member organizations largely relating to the Exchange's new hybrid market trading platform (known as AEMI), the upcoming implementation of Regulation NMS, and changes in the competitive landscape for equities and ETFs.[5] These new transaction charges became effective January 2, 2007.[6] Since the adoption of the new transaction fees, the Exchange has been having difficulty with its billing system's ability to obtain the data necessary to calculate an accurate bill and provide data to the clearing firms in a timely manner so they can accurately pass these charges on to their customers. As a result, the Exchange in this filing proposes to revert back to transaction charges for customers[7] in equities and ETFs in effect prior to January 2, 2007. In

[5] *See* Securities Exchange Act Release No. 55195 (January 30, 2007) 72 FR 5469 (February 6, 2007) (Amex File No. 2006–117).

[6] This discussion originally stated, at various points, that the new transaction charges became effective January 3, 2007; however, the approved date of effectiveness was actually January 2, 2007. E-mail communication between Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, and Claire P. McGrath, Senior Vice President and General Counsel, Amex, on March 2, 2007.

[7] Customers are defined for purposes of the Equity and ETF Fee Schedules to include all market participants except specialists and registered traders. Therefore, customers (and the fees charged to them) include members' off-floor proprietary accounts, competing market makers and other member and non-member broker-dealers. The Nasdaq UTP Fee Schedule defines customers to include any market participant other than a ''competing market maker.''

addition, as an incentive to member firms to send order flow to the Exchange, a five percent discount will be applied to each firm's total charges for customer orders. Transaction charges for specialists in equities and specialists and registered traders in ETFs will be made consistent across the product lines and will generally be applied in the same manner as under the prior schedule, but at a lower rate. The five percent discount will not be applied to charges for specialists and registered traders. In addition, for transactions charges in Nasdaq UTP securities, the Exchange will also revert back to the fee schedule in effect prior to January 2, 2007 and will apply the five percent discount to charges for member and non-member customer transactions.

Currently, under the recently adopted fee schedule, transaction charges for equities, ETFs, and Nasdaq UTP securities differ based on whether the charge is for a customer or specialist and registered trader. Transaction charges for executions in equities and ETFs are divided into two tiers based on the average daily volume as reported by the appropriate NMS Plan in the security industry-wide.[8] Transaction charges for all securities traded by Amex pursuant to unlisted trading privileges (including Nasdaq UTP securities) regardless of average daily trading volume are priced based on one of the tiers as noted below. The transaction charges vary within each tier depending on the type of orders submitted for the customer account and the types of quotes and orders submitted for specialist and registered trader accounts.

Transaction Charges for Equities

The Exchange is now proposing that transaction charges for equities be assessed based generally on the previous fee schedule for all market participants on a per-share basis with the application of various caps and discounts. Specifically, the Exchange is proposing the following changes to the current Equity Fee Schedule: (i) Adoption of a monthly transaction charge to customers of $0.0030 per share for up to 50 million shares and $0.0025 per share for amounts over 50 million shares; (ii) adoption of a fee cap so that transaction charges are assessed only on the first 5,000 shares of each executed transaction; (iii) adoption of a fee waiver of transaction charges for certain electronic orders of up to 500 shares (this fee waiver will not apply to electronic orders of a member or member organization trading as an agent for the account of a non-member competing market maker);[9] and (iv) adoption of a five percent discount on total amount of customer transaction charges. For transaction charges assessed to specialists in equities, the Exchange will not revert back to the previous fee schedule where the per-share charge was waived and a charge based on the total dollar value of specialist transactions was imposed, but will instead impose a specialist transaction charge at the rate of $0.03 per 100 shares.

The other provisions of the current Equity Fee Schedule including the ''Equities Order Cancellation Fee,'' ''Clearing Charges for Orders Routed to Another Market Center,'' and ''Pass-Through Charges to Orders Routed to Another Market Center Through the NMS Linkage Plan'' will remain the same.

Transaction Charges for ETFs

Similar to equities as set forth above, Amex is proposing that transaction charges for ETFs be assessed based generally on the previous fee schedule for all market participants monthly on a per-share basis with the application of various caps and discounts. Specifically, the Exchange is proposing the following changes to the current ETF Fee Schedule: (i) Adoption of transaction charges for customers of $0.34 per 100 shares for all ETFs;[10] (ii) adoption of a $100 cap on the fee charged per transaction for each customer trade; (iii) adoption of a waiver of transaction charges for electronic orders of up to 2,400 shares (this fee waiver will not apply to electronic orders of a member or member organization trading as an agent for the account of a non-member competing market maker);[11] (iv) adoption of a five percent discount on the total amount of customer transaction charges; (v) adoption of an additional value-based fee for transactions of non-member competing market makers of $0.000075 times the total value of orders entered by a member or member organization trading as agent for the account of a non-member competing market makers;[12] (vi) adoption of transaction charges for specialists and registered traders of $0.03 per 100 shares per trade for all ETFs; and (vii) adoption of a monthly specialist fee cap of $400,000.

The other provisions of the current ETF Fee Schedule including the ''Order Cancellation Fee,'' ''Clearing Charges for Orders Routed to Another Market Center,'' and ''Pass-Through Charges to Orders Routed to Another Market Center Through the NMS Linkage Plan'' will remain the same.

Nasdaq UTP Equity Fee Schedule

The separate Nasdaq UTP Equity Fee Schedule was eliminated with the adoption of the new Equity Fee Schedule since all securities traded on the Exchange based on unlisted trading privileges (including Nasdaq UTP securities) were covered under the Tier One pricing provisions of the new Equity Fee Schedule. The Exchange is now proposing to revert back to the Nasdaq UTP Equity Fee Schedule in place prior to January 2, 2007. Specifically, the Exchange proposes to: (i) Adopt a transaction charge for specialists of $0.10 per 100 shares; however, the Exchange will waive this transaction charge to those specialists that do not charge commissions to customers in Nasdaq UTP securities; (ii) adopt a transaction charge for member and non-member customers of $0.15 per 100 shares; (iii) adopt a five percent discount on the total amount of customer transaction charges; (iv) adopt a transaction charge for member and non-member competing market makers of $0.15 per 100 shares; (v) adopt a transaction charge for Amex Equity Traders of $0.15 per 100 shares; and (vi) adopt a $50 cap on the fee charged for each side of a cross transaction.

* * * * *

The Exchange will impose these transaction charges on its members and

[8] Tier One pricing is applied to equities and ETFs whose industry-wide average daily trading volume is 500,000 shares or greater during the previous rolling quarter. In addition, Tier One pricing applies to all securities traded on the Exchange pursuant to unlisted trading privileges (''UTP'') (including Nasdaq UTP securities) regardless of the their average daily trading volume. All new listings including IPOs, transfers, and dual listings are initially categorized as Tier One securities until the next quarterly recalculation. Tier Two pricing is applied to all equities and ETFs whose industry-wide average daily trading volume is less than 500,000 shares during the previous rolling quarter.

[9] A ''competing market maker'' is defined as a specialist or market maker registered as such on a registered stock exchange (other than Amex), or a market maker bidding and offering over-the-counter, in an Amex-traded security. The Exchange has subsequently filed another proposed rule change (SR–Amex–2007–30) to remove the provision barring the application of the fee waiver to non-member competing market makers retroactively to March 1, 2007. Hence, as of March 1, 2007, non-member competing market makers are eligible for the fee waiver.

[10] This charge was reduced to $0.30 by a subsequent filing that the Exchange submitted, SR–Amex–2007–28.

[11] SR–Amex–2007–30 also eliminates the provision barring the application of the fee waiver to non-member competing market makers retroactively to March 1, 2007. Hence, as of March 1, 2007, non-member competing market makers are eligible for this fee waiver.

[12] This fee was subsequently eliminated by SR–Amex–2007–28.

member organizations effective February 22, 2007.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act [13] regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) thereunder [15] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2007–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–23 and should be submitted on or before April 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5059 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55472; File No. SR–BSE–2007–08]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Add an Automatic Quote Cancellation Procedure to the Boston Options Exchange Rules

March 14, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 13, 2007, BSE submitted Amendment No. 1 to the proposed rule change. BSE has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self–Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to add Section 15, Automatic Quote Cancellation Procedure, to Chapter VI in the Boston Options Exchange (''BOX'') Rules. This proposed addition to the BOX Rules will provide a BOX Market Maker the option of enabling automatic quote cancellation protection so its quotes will be automatically cancelled if it is technically disconnected from the BOX Trading Host. The text of the proposed rule change is below. Proposed new language is in *italics.*

Chapter VI. Market Makers

Sec. 1 through Sec. 14—No Change.

Sec. 15 Automatic Quote Cancellation Procedure:

(a) The Automatic Quote Cancellation Procedure is enabled (or disabled) for all of a Market Maker's appointed options classes when a Market Maker sends an Automatic Quote Cancellation Procedure enabling (or disabling) message to the Trading Host. The Market Maker must provide in the enable message the duration of no technical connectivity after which the Trading Host should cancel his quotes (set for a duration of between one and nine seconds). Unless enabled, the Automatic Quote Cancellation Procedure is disabled for all options classes.

(*b) When the Automatic Quote Cancellation Procedure has been enabled, the Trading Host will automatically cancel all quotes posted by the Market Maker in all of the Market Maker's appointed options classes when*

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[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

there has been no technical communication with the Trading Host for the time indicated by the Market Maker as described in section 15(a) above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE 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. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed addition to the BOX Rules will provide a BOX Market Maker protection when it becomes disconnected from the BOX Trading Host. The proposed rule will allow a BOX Market Maker the option to turn on the automatic quote cancellation protection by sending an enabling message to the BOX Trading Host. The enabling message must provide the duration of no technical connectivity (between one and nine seconds) after which the BOX Trading Host will cancel all of the Market Maker's quotes. Once the Market Maker enables this protection, the BOX Trading Host will count the number of seconds since the last quote message or heartbeat (''Message'') received from the Market Maker. Each Market Maker Message received by the BOX Trading Host will restart the counter. A Market Maker's quotes will be automatically canceled if the BOX Trading Host counter reaches the Market Maker's specified timeframe. There is no outgoing message sent by the BOX Trading Host which will trigger the automatic quote cancellation procedure. The Exchange believes that this proposed rule change will benefit the marketplace, as it reduces the chance of erroneous or stale quotes if a BOX Market Maker loses technical connectivity.

The following example illustrates how the Automatic Quote Cancellation Procedure will work:

START OF THE DAY

11:37:05:82—Market Maker sends a message enabling the automatic quote cancellation procedure, setting the BOX Trading Host counter for 5 seconds of no activity

Counter starts

11:37:09:26—Market Maker sends a Bulk Quote on class 1

Counter re-starts

11:37:10:06—Market Maker sends a Panic Quote on class 1

Counter re-starts

11:37:12:06—Market Maker sends a Bulk Quote on class 2

Counter re-starts

11:37:13:06—Market Maker sends a Heartbeat

Counter re-starts

11:37:18:07—Nothing received from the Market Maker.

The Box Trading Host cancels all of the Market Maker's quotes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6(b) of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of an existing order entry or trading system of the Exchange, the foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(5) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–BSE–2007–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(5).

[9] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on March 13, 2007, the date on which the Exchange submitted Amendment No. 1.

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–BSE–2007–08 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5115 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55474; File No. SRCBOE–2007–20]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program Relating to Multiple Aggregation Units

March 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend for an additional year, until March 14, 2008, an existing Pilot Program that allows a CBOE member or member firm to have multiple aggregation units operating as separate Market-Makers or Remote Market-Makers (''RMMs'') within the same class. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/Legal*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend for an additional year, until March 14, 2008, an existing Pilot Program that allows a CBOE member or member firm to have multiple aggregation units operating as separate Market-Makers or RMMs within the same class, provided they satisfy certain criteria set forth in Rule 8.4(c)(ii)(A)–(C).[5]

In March 2005, CBOE amended its rules to establish a new membership status called RMM, who have the ability to submit quotes to the CBOE from a location outside of the physical trading station of the RMM's appointed class.[6] In connection with the adoption of these rules, CBOE also adopted provisions in its rules relating to RMM affiliation limitations. Specifically, CBOE Rule 8.4(c) provides that except as otherwise provided, an RMM may not have an appointment as an RMM in any class in which it or its member organization serves as DPM, e-DPM, RMM, or Market-Maker on CBOE.

One exception that was approved on a pilot basis was the ability of a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided certain specific criteria were complied with.[7]

In March 2006, the Pilot Program was extended for an additional year,[8] and is also applicable to Market-Makers.[9] CBOE believes that the Pilot Program has been successful, in that it allows a CBOE member or member firm to have multiple aggregation units operating as separate Market-Makers or RMMs within the same class, provided they comply with certain specific criteria. CBOE has not experienced any negative effects with respect to the Pilot Program. Thus, CBOE believes it would be appropriate and beneficial to extend this Pilot Program for an additional year, until March 14, 2008.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither received nor solicited written comments on the proposal.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Rule 8.3(c)(viii) and Rule 8.4(c)(ii).

[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (approving SR–CBOE–2004–75).

[7] A second exception, also adopted on a pilot basis and contained in Rule 8.4(c)(i), permits a member or member firm operating as an RMM in a class to have one Market-Maker affiliated with the RMM organization trading in open outcry in any specific class allocated to the RMM, provided such Market-Maker trades on a separate membership.

[8] *See* Securities Exchange Act Release No. 53414 (March 3, 2006), 71 FR 12753 (March 13, 2006) (approving SR–CBOE–2006–25).

[9] *See* Securities Exchange Act Release No. 54182 (July 20, 2006), 71FR 42692 (July 20, 2006) (approving SR–CBOE–2006–51).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 [13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6) of the Act,[14] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that proposal may take effect upon filing. The Commission believes that the proposed rule change does not raise any new regulatory issues and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, so that the pilot may continue without interruption.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–20 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5116 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55443; File No. SR–NASDAQ–2006–048]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish a Data Entitlement Named ''Depth Feed'' Consisting of Data Feeds Nasdaq TotalView and Nasdaq OpenView, and To Establish a Distribution Charge for Depth Feed

March 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') 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 substantially by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the fee schedule for distribution of data from the Nasdaq Market Center. Specifically, Nasdaq is proposing to establish a data entitlement named ''Depth Feed'' consisting of two data feeds: Nasdaq TotalView and Nasdaq OpenView. Nasdaq also proposes to establish a distribution charge for Depth Feed.

The text of the proposed rule change is available at Nasdaq, *www.nasdaq.com,* and the Commission's Public Reference Room.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://www.complinet.com/nasdaq.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq offers data products that firms may purchase and redistribute either within their own organizations or to outside parties. Nasdaq assesses ''distributor fees'' that are designed to encourage broad distribution of the data, and to allow Nasdaq to recover the relatively high fixed costs associated with supporting connectivity and contractual relationships with distributors. Currently, Nasdaq has the following approved distributor fees in place for both TotalView and OpenView: [4]

- TotalView and OpenView Direct Access Fee: $2,500 per month each;
- TotalView and OpenView Internal Distribution Fee: $1,000 per month each;
- TotalView and OpenView External Distribution Fee: $2,500 per month each.

Thus, for example, if a firm receives TotalView and OpenView directly from Nasdaq and distributes the data externally, the firm currently pays $10,000 per month in distributor fees ($2,500 for direct access to TotalView, $2,500 for direct access to OpenView, $2,500 to externally distribute TotalView, and $2,500 to externally distribute OpenView).

Nasdaq proposes to combine the distribution of TotalView and OpenView data into a single entitlement for distribution purposes. Specifically, Nasdaq proposes to establish the ''Depth Feed Distributor Fees,'' a consolidated entitlement with a pricing structure comprised of three components:

- Depth Feed Direct Access Fee: $2,500 per month for any organization that receives an intraday Nasdaq market center depth data product directly from Nasdaq. A distributor receiving this data indirectly via a re-transmission vendor is not liable for the Direct Access Fee.
- Depth Feed Internal Distribution Fee: $500 per month for internal distributors with distribution of TotalView and/or OpenView data to 10 or fewer subscribers, $1,000 per month for internal distributors with distribution of TotalView and/or OpenView data to greater than 10 subscribers. As with the current Internal Distribution Fees, this fee will be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data solely within its own organization.
- Depth Feed External Distribution Fee: $1,000 per month for external distributors distributing TotalView and/or OpenView data to 50 or fewer subscribers; $2,500 per month for external distributors distributing TotalView and/or OpenView data to more than 50 and less than or equal to 100 subscribers, and $4,500 per month for external distributors distributing TotalView and/or OpenView data to more than 100 recipients. As is the case today, this fee will be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data outside its own organization.

Under the new schedule, the firm that receives TotalView directly from Nasdaq and distributes the data externally will pay a range of $3,500–$7,000 per month, depending upon the number of end users, a significant reduction from the currently approved fees. The only firms that would be assessed higher fees would be firms that currently distribute either TotalView or OpenView but not both, and distribute that data to more than 100 subscribers; a resulting increase of $2,000 per month. For that incremental $2,000 per month, those firms, of which there are currently 17, will gain the ability to distribute both NYSE-/Amex-listed and Nasdaq-listed depth information to their subscribers where they had previously provided only one of them.

An organization that receives the Nasdaq Market Center full depth data directly from Nasdaq will pay the Direct Access Fee plus the higher of either the Internal Distribution or External Distribution Fee (but not both). An organization that only receives the Nasdaq Market Center full depth data indirectly from a retransmission vendor will pay either the Internal Distribution or External Distribution fee (but not both). As with past distributor fee structures, the External Distribution Fee is higher than the Internal Distribution Fee to reflect the fact that external distributors typically have broader distribution of the data than internal distributors.

On balance, market data distributors will pay less to distribute the new consolidated Depth Feed than they pay today for distributing TotalView and OpenView. Specifically, many TotalView and OpenView distributors will receive a fee decrease, including firms that distribute both entitlements to their external customers who pay $10,000 monthly today but only $5,000 monthly under the proposed rule change. Other distributors will experience no fee change, including those that distribute either TotalView or OpenView to 10 or more internal recipients.

A small number of vendors will experience a small fee increase of $2,000–specifically, those vendors that distribute only one of the two current entitlements to more than 100 external recipients. If current distribution patterns continue, this fee increase will apply to 11 vendors. Nasdaq notes that the number of affected vendors is a small percentage of the total vendor population. Currently, over 1,500 vendors distribute Nasdaq proprietary data. Of those, 975 vendors distribute real-time data, and, of those, 160 vendors distribute full depth-of-book data. Thus, in a vendor population of over 1,500, only 11 will experience a fee increase.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable charges among the persons distributing Nasdaq depth of book information. Nasdaq further believes that this proposed rule change will encourage broader redistribution of the Nasdaq depth of book information, thus improving transparency and thereby benefiting the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As a general matter, the Commission has long held the view that ''competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system.'' [7] The Commission has also stated ''that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs,

[4] *See* Securities Exchange Act Release No. 51814 (June 9, 2005), 70 FR 35151 (June 16, 2005) (SR–NASDAQ–2004–185).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR–NASD–99–53).

and better service in the interest of investors and the general public.''[8]

The proposed rule change is designed to increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner. There is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. Nasdaq fully expects its competitors to quickly respond to this proposal as they have responded to other Nasdaq data products in the past.

Moreover, market forces have shaped the market data fees that Nasdaq has charged for this product in the past and will continue to shape those fees in the future. Over time, Nasdaq has continually decreased the cost of data distribution to promote continued growth in the use of depth of book data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments 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 self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2006–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–048. 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 Nasdaq. 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–NASDAQ–2006–048 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5058 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[8] Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291, 41298 (July 20, 2006) (SR–NASDAQ–2006–001).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55463; File No. SR–NASDAQ–2006–041]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendment No. 1 To Modify an Aspect of the Definition of Independent Director

March 13, 2007.

I. Introduction

On October 3, 2006, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify an aspect of Nasdaq's definition of ''independent director.'' The proposed rule change was published for comment in the **Federal Register** on November 28, 2006.[3] The Commission received no comment letters on the proposal as published. On March 2, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing notice of Amendment No. 1 to the proposed rule change and granting approval to the proposed rule change as modified by Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

Under current Nasdaq Rule 4200(a)(15)(B), a director of a listed issuer is generally precluded from being considered independent if that director has received more than $60,000 in compensation from the issuer during any period of twelve consecutive months within the three years preceding the determination of independence.[4] The proposed rule change would raise this amount to $100,000, the same figure specified by the New York Stock Exchange (''NYSE'') in its comparable independence standard.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54797 (November 20, 2006), 71 FR 68855 (''Notice'').

[4] *See* Nasdaq Rule 4200(a)(15)(b).

[5] *See* Section 303A.02(b)(ii) of the NYSE Listed Company Manual. *See also* Amendment No. 1 to the proposed rule change.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Nasdaq,[6] and, in particular, with Section 6(b)(5) of the Act.[7]

The Commission believes that the proposed rule change is reasonable and would align Nasdaq's ''bright line'' test with respect to a director's receipt of compensation from the issuer more closely with the equivalent rule of the NYSE. The Commission notes that, under the proposed rule change, a Nasdaq listed issuer's board would still have the responsibility to make an affirmative determination that an independent director has no relationship whatsoever with the issuer that would impair his or her independence, even when the director has passed the ''bright line'' test of the rule and has not accepted (and has no family member who has accepted) more than $100,000 in compensation from the issuer during the relevant period.[8]

IV. Solicitation of Comments Concerning the Proposed Rule Change

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2006–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–041. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–041 and should be submitted on or before April 11, 2007.

V. Accelerated Approval of the Proposed Rule Change

Nasdaq has requested that the Commission approve the proposed rule change as modified by Amendment No. 1 on an accelerated basis.[9] Pursuant to Section 19(b)(2) of the Act,[10] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

The Commission hereby finds good cause to approve the proposed rule change as amended by Amendment No. 1 on an accelerated basis. The proposed rule change as published in the Notice would have raised the amount of compensation that precludes a director from being an ''independent director'' from $60,000 to $120,000. Amendment No. 1 established the compensation threshold at $100,000. The Commission believes that this change raises no new regulatory issues and aligns Nasdaq's rule with the equivalent rule of the NYSE. The Commission believes that no reasonable purpose would be served by delaying implementation of the proposal.

Accordingly, pursuant to Section 19(b)(2) of the Act,[11] the Commission finds good cause to approve the proposed rule change as modified by Amendment No. 1 prior to the 30th day after notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–NASDAQ–2006–041), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5084 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55457; File No. SR–NASDAQ–2006–064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Modify the Fee for Connecting to a Nasdaq Data Center Over the Internet

March 13, 2007.

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 December 22, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On January 19, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. On February 22, 2007, Nasdaq submitted Amendment No. 2 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

Nasdaq proposes to amend Rule 7034 to modify the fee for connecting to a Nasdaq data center over the Internet. The text of the proposed rule change is

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[6] 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).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Nasdaq Rule 4200(a)(15) and IM–4200—''Definition of Independence.'' *See also* Notice, *supra* note 3, at note 8.

[9] *See* Amendment No. 1.

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 replaced and superseded the original filing and Amendment No. 1 in their entirety.

available at Nasdaq, the Commission's Public Reference Room, and *http://www.nasdaq.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to change the fee that Nasdaq charges for an Internet port used in the delivery of market data (Internet ports are currently available to connect to Nasdaq systems via the INET protocols) and to make certain conforming and clerical changes in the text of Nasdaq Rule 7034, which sets out charges for Nasdaq connectivity via the INET protocols.

Following the recently completed consolidation of Nasdaq's three order books and corresponding matching engines—INET, Brut, and SuperMontage—into a single book (''SingleBook'') within the Nasdaq Market Center (''NMC''), Nasdaq users have retained the ability to connect with the NMC using the legacy access protocols of all three systems. Access to the NMC via secure Internet connectivity is one of several options available to INET protocol users both for entering orders and for receiving market data. (The number of customers currently using an Internet port to receive market data is relatively small. Legacy SuperMontage and Brut protocols do not currently include Internet access.) Other NMC connectivity options include extranet connectivity, where a user contracts directly with a third-party extranet provider, and private line connectivity, where a user leases a circuit directly from a third-party provider.

Today, Nasdaq charges INET protocol users an additional $200 (in addition to the established charges for port pairs) for each port used to connect to a Nasdaq data center over the Internet because making such ports available requires Nasdaq to procure and maintain appropriate telecommunications circuits connecting its data centers to the points-of-presence of an Internet service provider. By contrast, in the case of extranet and private circuit connections, Nasdaq is not responsible for the outside telecommunications circuits.

Since the introduction of Nasdaq's SingleBook, the volume of market data being delivered from Nasdaq to subscribers has increased from a peak of approximately 5Mbs at the end of October of 2006 to a peak of approximately 25Mbs as of the date of this filing. Consequently, in order to continue to adequately support Internet market data connections, Nasdaq expanded its available Internet bandwidth. In light of the expanded Internet bandwidth requirements, Nasdaq proposes to increase its Internet port fee from $200 to $600 per Internet port that is used to deliver market data. The additional Internet port fee with respect to Internet ports used for order entry will remain unchanged at the current $200 level.

The proposed rule change also eliminates from the rule text references to the locations of data centers (because the relevant fees will not vary based on data center location) and it eliminates the reference to and pricing for Instinet Portal (a product now available from INET's former owner, Instinet, which INET was supporting on a transitional basis). Finally, the proposed rule change makes a clerical correction to the currently incomplete reference to SR–NASDAQ–2006–024 in the existing rule text.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) of the Act,[5] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments 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 Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–064. 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 Nasdaq. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2006–064 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5088 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55461; File No. SR–NASDAQ–2007–017]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

March 13, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this rule change on March 1, 2007. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://www.nasdaq.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

This filing modifies the pricing schedule for trading securities through the Nasdaq Market Center. The changes reflect (i) The increase in volumes traded through the Nasdaq Market Center as a result of Nasdaq beginning to trade non-Nasdaq exchange-listed securities through the Nasdaq Market Center as of February 12, 2007, and (ii) responses to the competitive environment in which Nasdaq operates. Specifically, because much of the volume in non-Nasdaq securities that had formerly traded through the NASD ITS/CAES System has moved to the Nasdaq Market Center, the proposed rule change deletes language under which Nasdaq considered a member's volume in ITS/CAES in determining its fees for using the Nasdaq Market Center. Similarly, Nasdaq is modifying its existing charge for reporting transactions executed through the Nasdaq Market Center to reflect the increase in the volume of the Nasdaq Market Center occasioned by its beginning to trade non-Nasdaq securities. Currently, the $0.029 per side fee applies to members with an average daily volume during a month of less than 10,000 transaction reports; the threshold is being raised to 15,000 transaction reports.

Nasdaq is also modifying its fees for routing to the New York Stock Exchange LLC (''NYSE'') to reflect an NYSE proposal to charge $0.0025 per share for routing orders to other markets.[5] When Nasdaq routes an order to NYSE and is charged this fee by NYSE, Nasdaq proposes to pass the fee on to its members on a direct basis. Finally, in order to ensure that Nasdaq's overall fees remain competitive, Nasdaq is lowering its lowest fee for removing liquidity and/or routing from $0.0027 per share executed to $0.0026. The fee is charged to members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) More than 35 million shares of liquidity provided, and (ii) more than 55 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) More than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed. Members with lower volumes pay $0.0028 or $0.003 per share executed, depending on their volume levels.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) of the Act,[7] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the fees reflect the fact that Nasdaq has begun to trade non-Nasdaq exchange-listed securities through the Nasdaq Market Center, and also reflect fee changes by Nasdaq's competitors and the overall competitive environment in which Nasdaq operates.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* File No. SR–NYSE–2007–18 (February 22, 2007).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder [9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2007–017 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5089 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55478; File No. SR–NSCC–2007–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule To Make Technical and Updating Changes to Its Reconfirmation and Pricing Service

March 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 26, 2007, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to make technical and updating changes to its Reconfirmation and Pricing Service (''RECAPS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

RECAPS is a mandated service for all full-service NSCC members that reconfirms and reprices members' fails in RECAP-eligible securities that represent positions that are currently failing outside of NSCC's Continuous Net Settlement (''CNS'') system. It thus provides a mechanism for reducing outstanding non-CNS member fails. The proposed revisions to the procedures reflect enhancements to the service, confirming processing changes with current processes, and deletion of obsolete reports.

RECAPS is currently offered quarterly. The processing cycle begins on a Tuesday and ends with successfully matched trades settling the following Tuesday. On the first Tuesday of the processing cycle, members submit CUSIP files for fails designated for processing through the service. The data on these files is used to obtain current prices for the designated securities. On Friday, members submit eligible aged fails to NSCC until a designated cut-off time. On Saturday, NSCC distributes RECAPS contract sheets, RECAPS CNS and Non-CNS Compared Summaries, Balance Orders (for matched transactions in Balance Order securities), and RECAPS CNS Projection Reports and Advisory Listings. On Monday, members take action on all unmatched items. On Tuesday, the final day of the RECAPS cycle, all matched fails are scheduled to settle.

The process enhancements eliminate the need for submission of CUSIP files on Tuesday since current price information can be obtained on Friday when members submit their fails for reconfirming and pricing. In addition,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

the process enhancements enable the distribution of reports at an earlier time on Saturday and enable fails to settle on the next settlement day after they match (*e.g.*, fails matched on Friday will settle on Monday and fails matched on Monday will settle on Tuesday).

Furthermore, the RECAPS CNS Projection Report is being eliminated because the relevant information will be provided on the existing CNS Projection Report. Similarly, to conform to current trade processing practices where NSCC has eliminated Balance Order and Receive and Deliver tickets,[5] RECAPS Balance Orders and RECAPS Trade-for-Trade Receive and Deliver Orders will be evidenced by the information contained on the RECAPS Non-CNS Compared Trade Summary.

Finally, the RECAPS procedure is being revised to clarify that reconfirmed fails in securities where the original fail price was less than one penny per share will settle on a trade-for-trade basis as a ''Special Trade'' with the RECAPS value being the original comparison value (as opposed to the system-generated price of one cent per share). Clarifying language also is being added to distinguish between information that appears on the RECAPS CNS Compared Trade Summary and information on the RECAPS Non-CNS Compared Trade Summary.

Since the RECAPS procedures provides for NSCC to determine the processing schedule for each RECAPS cycle, NSCC advises its participants of the RECAPS calendar and the processing schedule through Important Notices. Members have been advised on the proposed scheduling changes outlined above, as well as the other enhancements described in this filing, in Important Notice A#6323, P&S#5893 dated October 26, 2006.

The proposed rule change is consistent with Section 17A of the Act,[6] as amended, because the updated procedures and operational enhancements will further facilitate the accurate clearance and settlement of securities transactions, particularly, the settlement of aged fails.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. On October 26, 2006, members were advised by Important Notice A#6323, P&S#5893, of the proposed enhancements to RECAPS. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because it effects a change in an existing service of NSCC that: (i) Does not adversely affect the safeguarding of securities or funds in the custody of NSCC or for which it is responsible; and (ii) does not significantly affect the respective rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2007–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2007–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://nscc.com/legal/2007/2007-03.pdf.* 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–NSCC–2007–03 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5133 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[5] Balance Order and Receiver and Deliver tickets were eliminated as part of the CNS Rewrite in 2004. Securities Exchange Act Release No. 50026 (July 15, 2004), 69 FR 43650 (July 21, 2004) [File No. SR–NSCC–2004–01].

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55453; File No. SR–NYSEArca-2006–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Trade Shares of the PowerShares DB Energy Fund, the PowerShares DB Oil Fund, the PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund Pursuant to Unlisted Trading Privileges

March 13, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On October 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on February 16, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. This order provides notice of the proposed rule change as modified by Amendment Nos. 1 and 2 and approves the proposed rule change as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to trade shares (''Shares'') of the PowerShares DB Energy Fund, the PowerShares DB Oil Fund, the PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund (collectively the ''Funds'') pursuant to unlisted trading privileges (''UTP'') under Commentary .02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://nysearca.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts (''TIRs'') investing in shares or securities (''Investment Shares'') that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities.[3] The Commission previously approved a proposal to list and trade the Shares of the Funds by the American Stock Exchange LLC (the ''Amex'').[4]

The Exchange proposes to trade pursuant to UTP the Shares of each of the Funds pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. The Shares represent beneficial ownership interests in the corresponding Fund's net assets, consisting solely of the common units of beneficial interests of the DB Energy Master Fund, the DB Oil Master Fund, the DB Precious Metals Master Fund, the DB Gold Master Fund, the DB Silver Master Fund, the DB Base Metals Master Fund and the DB Agriculture Master Fund, respectively (collectively, the ''Master Funds'').

DB Multi-Sector Commodity Master Trust (the ''Master Trust'') is organized as a Delaware statutory trust with each of the Master Funds representing a series of the Master Trust. The Master Funds will hold primarily [5] futures contracts [6] on the commodities comprising the Deutsche Bank Liquid Commodity Index—Optimum Yield Energy Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Crude Oil Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Precious Metals Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Gold Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Silver Excess Return™, Deutsche Bank Liquid Commodity Index Optimum Yield Industrial Metals Excess Return™, and Deutsche Bank Liquid Commodity Index—Optimum Yield Agriculture Excess Return™ (collectively, the ''Indexes''), as the case may be. The sponsor of the Indexes is Deutsche Bank AG London (the ''Index Sponsor''). Each of the Funds and each of the Master Funds are commodity pools operated by DB Commodity Services LLC (the ''Managing Owner'').[7]

The Shares

The Exchange submits that Commentary .02 to NYSE Arca Equities Rule 8.200 accommodates the listing and trading of the Shares. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 4:15 p.m. Eastern Time (''ET''), except that shares of the PowerShares

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In April 2006, the Commission approved Commentary .02 to NYSE Arca Equities Rule 8.200, which sets forth the rules related to listing and trading criteria for Investment Shares, and approved trading pursuant to UTP the shares of the DB Commodity Index Tracking Fund. *See* Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR–PCX–2006–22). In addition, the Commission recently approved trading pursuant to UTP the shares of the PowerShares DB G10 Harvest Fund pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. *See* Securities Exchange Act Release No. 34–54569 (October 4, 2006), 71 FR 60594 (October 13, 2006) (SR–NYSEArca–2006–64).

[4] *See* Securities Exchange Act Release No. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR–Amex–2006–76) (the ''Amex Order'').

[5] Other holdings of the Master Fund will include cash and U.S. Treasury securities for deposit with futures commission merchants as margin and other high credit quality short-term fixed income securities.

[6] Following is a list of futures contracts and other commodity interests in which the respective Master Fund may invest and the exchanges on which they trade: Energy Index—sweet light crude (NYMEX), heating oil (NYMEX), brent crude oil (ICE Futures), RBOB gasoline (NYMEX), natural gas (NYMEX); Oil Index—sweet light crude (NYMEX); Precious Metals Index—gold (COMEX), silver (COMEX); Gold Index—gold (COMEX); Silver Index—silver (COMEX); Base Metals Index—aluminum (LME), zinc (LME), copper-grade A (LME); Agriculture Index—corn (CBOT), wheat (CBOT), soybeans (CBOT), sugar (NYBOT).

[7] The Managing Owner is registered as a commodity pool operator (the ''CPO'') and commodity trading advisor (the ''CTA'') with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA''). The Managing Owner will serve as the CPO and CTA of each of the Funds and each of the Master Funds.

DB Base Metals Fund will also trade from 4:15 p.m. until 8 p.m. ET, even if the Indicative Fund Value (''IFV''), as discussed below, is not disseminated from 4:15 p.m. until 8 p.m. ET.[8] The Exchange has appropriate rules to facilitate transactions in the Shares during these trading sessions.

Like other exchange traded fund products, each of the Funds will issue and redeem its Shares on a continuous basis at a price equal to the NAV per share next determined after an order is received in proper form. Also, each of the Funds will issue and redeem its Shares only in aggregations of 200,000 shares (''Basket Aggregations'') and only through qualified market participants that have entered into agreements with the Managing Owner (each, an ''Authorized Participant''). Additional information about the creation and redemption process is included in the Amex Order.[9] In summary, to create Shares, an Authorized Participant must properly place a creation order and deliver the specified ''cash deposit amount'' [10] and applicable transaction fee to the Fund Administrator (''The Bank of New York''). The Fund Administrator will issue to the Authorized Participant the appropriate number of Basket Aggregations. To redeem Shares, an Authorized Participant must properly place a redemption order and deliver Shares that in the aggregate constitute one or more Basket Aggregations, plus any applicable transaction fee. The Fund Administrator will deliver the appropriate ''cash redemption amount'' [11] for each Basket Aggregation that an Authorized Participant redeems.

On each business day, the Administrator will make available immediately prior to the opening of trading on Amex, through the facilities of the Consolidated Tape Association (''CTA''), the Basket Amount for the creation of a Basket. According to the Amex Order, the Amex will disseminate every 15 seconds throughout the trading day, via the facilities of the CTA, an amount representing on a per Share basis, the current values of the Basket Amounts for each of the Funds.

After 4 p.m. ET each business day, the Administrator will determine the NAV for each of the Funds, utilizing the current settlement value of the particular commodity futures contracts. The calculation methodology for the NAV is described in more detail in the Amex Order.

After 4 p.m. ET each business day, the Administrator, Amex and Managing Owner will disseminate the NAVs for the Shares and the Basket Amounts (for orders placed during the day). The Basket Amounts and the NAVs are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and the NAV will be available on the Funds' Web site at *http://www.dbfunds.db.com.*

Availability of Information About the Indexes, the Underlying Futures Contracts and the Shares

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System (''CTS''). The Index Sponsor will publish the value of each of the Indexes at least once every fifteen (15) seconds throughout each trading day on the CTA, Bloomberg, Reuters, and on the Fund's Web site at *http://www.dbfunds.db.com.* The closing Index levels will similarly be provided by the Index Sponsor. In addition, any adjustments or changes to the Indexes will also be provided by the Index Sponsor and Amex on their respective Web sites.

The Web site for the Fund (*http://www.dbfunds.db.com*), which is publicly accessible at no charge, will contain the following information: (a) The current NAV per share daily and the prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); [12] (c) the calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the prospectus; and (f) other applicable quantitative information.

As described above, the respective NAVs for the Funds will be calculated and disseminated daily to all market participants at the same time. According to the Amex Order, the Amex also intends to disseminate for each of the Funds on a daily basis by means of CTA/CTS High Speed Lines information with respect to the corresponding IFV (as discussed below), recent NAV and shares outstanding. The Amex will also make available on its Web site daily trading volume of the Shares of each of the Funds, closing prices of such Shares, and the corresponding NAV. The closing price and settlement prices of the futures contracts comprising the Indexes and held by the corresponding Master Funds are also readily available from the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Amex has represented that it will disseminate through the facilities of the CTA an updated IFV for each of the Funds. The respective IFVs will be disseminated on a per Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET, according to the Amex Order. The IFVs will be calculated based on the cash required for creations and redemptions for the respective Funds adjusted to reflect the price changes of the corresponding Index commodities through investments held by the Master Funds, *i.e.*, futures contracts.

The IFVs will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4:15 p.m. ET. While the Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. to 4:15 p.m. ET (the shares of the PowerShares DB Base Metals Fund, however, will trade until 8 p.m. ET), regular trading hours for each of the Index commodities on the various futures exchanges vary widely, as set forth in detail in the Amex Order. Therefore, the value of a Share may be influenced by non-concurrent trading hours between the NYSE Arca Marketplace and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca

[8] Because the LME is closed for floor and electronic trading during the Exchange's late trading session (from 4:15 p.m. until 8 p.m. ET), an updated IFV for the PowerShares DB Base Metals Fund is not possible to calculate during such session. The Exchange may rely on the listing market to monitor dissemination of the IFV during the Exchange's core trading session (9:30 a.m. to 4:15 p.m. ET). Currently the Index Sponsor for the PowerShares DB Base Metals Fund's index does not calculate updated index values during the Exchange's late trading session; however, if the Index Sponsor did so in the future, the Exchange will not trade shares of the PowerShares DB Base Metals Fund unless such official index value is widely disseminated.

[9] *See* Amex Order, *supra* note 4.

[10] The ''cash deposit amount'' equals the NAV per Share of the applicable Fund times 200,000 (*i.e.*, NAV per Basket Aggregation).

[11] The ''cash redemption amount'' equals the NAV per Basket Aggregation.

[12] The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

Equities Rule 7.12 or a halt because the IFV or the value of the Index is no longer available at least every 15 seconds; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. UTP trading in the Shares is also governed by the trading halts provisions of NYSE ARCA Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value (which would encompass the IFV) or the value of the underlying index.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 4:15 p.m. ET, except that shares of the PowerShares DB Base Metals Fund will also trade from 4:15 p.m. until 8 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during core and evening trading sessions.[13]

The trading of the Shares will be subject to Commentary .02(e)(1)–(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. See ''Surveillance'' below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [14] or by the halt or suspension of trading of the underlying futures contracts. See ''UTP Trading Criteria'' above for specific instances when the Exchange will cease trading the Shares.[15]

The Shares will not be subject to the short sale rule pursuant to a letter issued in response to a request for no-action advice under Rule 10a–1 under the Act.[16]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Further, trading in the Shares will be subject to Commentary .02(e)(1)–(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Commentary .02(e)(4) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying physical asset or commodity, related futures or options on futures or any other related derivative (including the Shares). In addition, Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying physical asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26. Commentary .02(e)(2)–(3) to NYSE Arca Equities Rule 8.200 requires that Market Makers handling the Shares provide the Exchange with all the necessary information relating to their trading in the underlying physical assets or commodities, related futures contracts and options thereon or any other derivative.

The Exchange currently has in place an Information Sharing Agreement with the Intercontinental Exchange, Inc. (ICE), Futures, London Metals Exchange (LME) and New York Mercantile Exchange (NYMEX), for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including Chicago Board of Trade (CBOT) and Board of Trade of the City of New York (NYBOT).[17]

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[18] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IFVs is disseminated; (4) the requirement that

[13] Telephone conversation between Tim Malinowski, Director, NYSE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation (''Division''), Commission, on March 6, 2007.

[14] *See* NYSE Arca Equities Rule 7.12.

[15] Pursuant to a telephone conversation between Tim Malinowski, Director, NYSE and Ronesha A. Butler, Special Counsel, Division, Commission, on March 13, 2007, a paragraph contained in this section was deleted to eliminate the reference to the ITS Plan.

[16] *See* Letter to George T. Simon, Esq., Foley & Lardner LLP, from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processing, Commission, dated June 21, 2006.

[17] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com.*

[18] NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from a Fund (by delivery of the corresponding Cash Deposit Amount) will receive a prospectus. ETP Holders purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares will be calculated after 4 p.m. ET each trading day. The Bulletin will disclose that information about the Shares of each Fund and the corresponding Indexes will be publicly available on the Funds' Web site.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [19] of the Act, in general, and furthers the objectives of Section 6(b)(5) [20] in particular in that 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 mechanisms of a free and open market and a national market system.

In addition, the proposed rule change is consistent with Rule 12f–5 [21] under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 240.12f–5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–62. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–62 and should be submitted on or before April 11, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[24] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[25] The Commission notes that it previously approved the listing and trading of the Shares on the Amex.[26] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[27] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

[22] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78l(f).

[25] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[26] *See* Amex Order, *supra* note 4.

[27] 17 CFR 240.12f–5.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[28] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Finally, the Commission notes that, if the Shares should be delisted by the Amex, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in the core and evening trading sessions.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange. In particular, the Exchange has in place an Information Sharing Agreement with ICE, LME, and NYMEX, for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. Further, the Exchange is a member of the ISG. In addition, to facilitate surveillance, the Exchange represents that trading in the Shares will be subject to Commentary .02(e)(1)–(4) to NYSE Arca Equities Rule 8.200.

3. The Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

4. The Exchange will require its ETP Holders to deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IFV or the value of the applicable Underlying Index is no longer available at least every 15 seconds; or (b) the listing market delists the Shares.

6. The Exchange will halt trading as provided in NYSE Arca Equities Rule 7.34.

This approval order is conditioned on the Exchange's adherence to these representations.

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on the Amex is consistent with the Act.[29] The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2006–62), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5085 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[29] *See* Amex Order, *supra* note 4.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55475; File No. SR–OC–2007–02]

Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Block Trades

March 15, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on February 5, 2007, OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago has also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act[3] on February 2, 2007.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its policy regarding block trades, the text of which is available at the Exchange and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

OneChicago is proposing to amend its Policies: Block Trades, Pre-Execution Discussions and Cross Trades (''Block Trade Policy'') relating to the block trade minimum contracts size. In addition to the current minimum contract size of 100 contracts for block trades, the proposed rule change would permit a minimum block trade contract size that is the equivalent to 10,000 shares of the underlying security for futures on single security (or combined securities if a relevant corporate event has occurred).

Based on its experience, the Exchange believes the proposed rule change would permit an appropriate minimum contract size for block trades. The proposed rule change would set a minimum contract size for block trades that is equivalent to the customary size of large transactions in relevant markets, i.e., the securities market. The proposed rule change would also permit a block trade size based on combined securities if a relevant corporate event has occurred. Combined securities would be relevant with certain corporate events, such as spin offs or three for two splits.

[3] 7 U.S.C. 7a–2(c).

For example, the Exchange has a March 2007 ABCD futures contract, which has a trading unit of 100 shares of ABCD. ABCD announces a spin-off in which an entity PQRS has been created and the spin-off ratio is one share of PQRS for every 10 shares of ABCD. The spin-off will occur (''the Ex date'') before the expiration of the March 2007 ABCD futures contract. After the Ex date, the trading unit or deliverable shares for the March 2007 ABCD futures contracts would be 100 shares of ABCD and 10 shares of PQRS. The minimum block trade size for the March 2007 ABCD futures contract after the Ex date would be 91. Another example would be when a corporate event results in a three for two split of shares. In that case, the trading unit or deliverable shares would be 150 (provided the trading unit for the futures contract was 100 shares), making the minimum block trade size 67 contracts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general and Section 6(b)(5) of the Act [5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago 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

Comments on the proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.[6] Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OC–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OC–2007–02. 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 OneChicago. 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–OC–2007–02 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5114 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(7).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55473; File No. SR–Phlx–2007–12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fees for Full Value Russell Index and Reduced Value Russell Index

March 14, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. On March 8, 2007, the Phlx submitted Amendment No. 1 to the proposed rule change. The Phlx has designated this proposal as one changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act [5] and Rule 19b–4 thereunder,[6] proposes to assess equity option charges, as opposed to index option charges on: (1) Options on the Russell 2000® Index [7] traded under the symbol

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other

RUT (the ''Full Value Russell Index''); and (2) options on the one-tenth value Russell 2000® Index traded under the symbol RMN (the ''Reduced Value Russell Index'')(the Full Value and the Reduced Value Russell Indexes together are referred to herein as the ''Russell Products'').[8] Therefore, the Exchange proposes to charge the Russell Products, which are index options, in the same manner that it charges for equity options.

In addition, the Exchange proposes to adopt a $0.15 per side license fee on ''firm-related'' comparison and transaction charges.[9] This license fee will be imposed only after the Exchange's $60,000 ''firm-related'' equity option and index option comparison and transaction charge cap is reached.[10]

The Exchange also proposes to amend its Summary of Equity Option Charges to reflect that a $0.15 license fee on the Russell Products will be assessed in connection with the Exchange's current cap on Registered Options Traders (''ROT'') comparison charges and ROT and specialist transaction charges[11] on non-AUTOM delivered equity option contracts[12] when an ROT or specialist executes over 14,000 contracts calculated on a daily basis. These terms apply only to transactions when an ROT or specialist is the contra-party to a customer order.[13] Therefore, after the 14,000 non-AUTOM delivered contract level is reached in a specific option, additional comparison and transaction charges are not assessed on subsequent option contracts in excess of 14,000 that are executed on that day in that specific option when the ROT or specialist is the contra-party to a customer order. Even when the 14,000 cap is reached, the license fee of $0.10 per contract side (or $0.15 per contract side for each of the Russell Products) will be imposed on applicable ROTs and specialists for equity option transactions on those licensed products that carry a license fee.[14]

This proposal is scheduled to become effective for transactions settling on or after February 20, 2007.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.Phlx.com,* at the Phlx, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to assess equity option charges, including payment for order flow charges, which are competitive with charges assessed on these same products by other exchanges.[15] Thus, the Russell Products will not be assessed customer comparison or transaction charges in accordance with the Exchange's equity option fee schedule.

The purpose of assessing the Russell Products a license fee of $0.15 per contract side after reaching the $60,000 cap and the 14,000 cap as described in this proposal is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges.[16] The caps operate this way in order to offer an incentive for additional volume without leaving the Exchange with significant out-of-pocket costs.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with

financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

[8] *See* Securities Exchange Act Release No. 55305 (February 15, 2007), 72 FR 8240 (February 23, 2007) (SR–Phlx–2006–65) (order approving listing and trading equity and FLEX options on the Russell Products, and LEAPS on the Full Value Russell Index). FLEX options are customized or flexible index and equity options and LEAPS are Long-term Equity Anticipation Securities or long term options series. *See* Phlx Rules 1079, 1012 and 1101A.

[9] Specifically, ''firm-related'' charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively, the ''firm-related charges'').

[10] The Exchange currently imposes a license fee of $0.10 per contract side for equity option and index option ''firm'' transactions on certain licensed products (collectively, ''licensed products'') after the $60,000 cap per member organization on all ''firm-related'' equity option and index option comparison and transaction charges combined is reached. Therefore, when a member organization exceeds the $60,000 cap (comprised of combined firm-related charges), the member organization is charged $60,000, plus the applicable license fee per contract side for any contracts in licensed products (if any) over those that were included in reaching the $60,000 cap. Thus, such firm-related charges in the aggregate for one billing month may not exceed $60,000 per month per member organization. For a complete list of the licensed products that are assessed a $0.10 license fee per contract side after the $60,000 cap is reached, *see* $60,000 ''Firm Related'' Equity Option and Index Option Cap on the Exchange's fee schedule. Consistent with current practice, when calculating the $60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees and then equity option and index option transaction and comparison charges for products with license fees that are assessed by the Exchange after the $60,000 cap is reached. *See* Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR–Phlx–2004–70); and *see e.g.,* Securities Exchange Act Release No. 53287 (February 14, 2006), 71 FR 9186 (February 22, 2006) (SR–Phlx–2006–10).

[11] The Exchange does not currently assess a comparison charge on specialist transactions. Therefore, the proposed cap will apply to ROT comparison and transaction charges combined and separately to specialist transaction charges.

[12] For purposes of this fee, orders delivered via the Floor Broker Management System shall be deemed to be non-AUTOM delivered orders. *See* Phlx Rule 1063.

[13] *See* Securities Exchange Act Release No. 54659 (October 27, 2006), 71 FR 64603 (November 2, 2006) (SR–Phlx–2006–67) (capping ROT comparison charges and ROT and specialist transaction charges when certain requirements are met. For equity options, ROT transaction and comparison charges and specialist transaction charges are not assessed on additional qualifying transactions on option contracts that number greater than 14,000, calculated per day per equity option overlying the same underlying security).

[14] For a complete list of the licensed products that will be assessed a license fee per contract side after the 14,000 equity option contract cap is reached, *see* $60,000 ''Firm Related'' Equity Option and Index Option Cap on the Exchange's fee schedule.

[15] *See e.g.*, Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (SR–ISE–2005–26) (establishing fees for transactions in options on RUT and RMN).

[16] *See e.g.*, Securities Exchange Act Release Nos. 55099 (January 12, 2007), 72 FR 2720 (January 22, 2007) (SR–NYSEArca–2006–91) (adopting a $0.15 per contract Royalty Fee on options traded on RUT); 55000 (December 21, 2006), 71 FR 78479 (December 29, 2006) (SR–BSE–2006–47) (establishing a $0.15 surcharge fee for transactions in options on RUT); 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (SR–Amex–2006–56) (adopting a per contract licensing fee for the orders of specialists, registered options traders, firms, non-member market makers, and broker-dealers in connection with options transactions on the RUT); and 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (SR–ISE–2005–26) (adopting a surcharge fee of $0.10 per contract for trading in RUT and RMN).

Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(4) of the Act,[18] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities.[19]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[20] and Rule 19b–4(f)(2) thereunder,[21] because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–12 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–12. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–12 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5060 Filed 3–20–07; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 8, 2007, the date on which the Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 21, 2007.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Frank Lalumiere, Director, Office of Surety Bonds, Small Business Administration, 409 3rd Street, SW., 8th Floor, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Frank Lalumiere, Director, Office of Surety Bonds 202–401–8275 *frank.lalumiere@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Small Business Administration (SBA) Surety Bond Guarantee Customer Survey''

Description of Respondents: Small Businesses within the Construction Industry.

Form No: N/A.

Annual Responses: 600.

Annual Burden: 13.33.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–5083 Filed 3–20–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0450]

Rustic Canyon Ventures SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Rustic Canyon Ventures SBIC, L.P., 2425 Olympic Blvd., Suite 6050W, Santa Monica, CA 90404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2006)). Rustic Canyon Ventures SBIC, L.P. proposes to provide equity security financing to Meximerica Media, Inc., 115 E. Travis #800, San Antonio, TX 78205. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Rustic Canyon Ventures, L.P. and Rustic Canyon/Fontis Partners, L.P., both Associates of Rustic Canyon Ventures SBIC, L.P., collective own more than ten percent of Meximerica Media, Inc. Therefore, Meximerica Media, Inc. is also considered an Associate of Rustic Canyon Ventures SBIC, L.P., as defined at 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E7–5082 Filed 3–20–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10796]

Missouri Disaster #MO–00009; Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of Missouri, dated 03/13/07.

Incident: Severe Winter Storms.

Incident Period: 11/30/2006 through 12/02/2006.

Effective Date: 03/13/07.

EIDL Loan Application Deadline Date: 11/01/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of an Economic Injury declaration for the State of Missouri dated 02/01/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: St. Charles.

Contiguous Counties:

Illinois: Calhoun, Jersey, Madison.

Missouri: Franklin, Lincoln, St. Louis, Warren.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002.)

Dated: March 13, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–5080 Filed 3–20–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

CommunityExpress Pilot Program

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Pilot Program extension.

SUMMARY: This notice announces SBA's extension of the CommunityExpress Pilot Program until December 31, 2007. This extension will allow time for the Agency to complete its analysis of this program and also complete internal discussions regarding potential modifications and enhancements.

DATES: The CommunityExpress Pilot Program is extended under this notice until December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6490; *charles.thomas@sba.gov*.

SUPPLEMENTARY INFORMATION: The CommunityExpress Pilot Program was established in 1999 as a subprogram of the Agency's SBAExpress Program. Lenders approved for participation in CommunityExpress are authorized to use the expedited loan processing procedures in place for the SBAExpress Program, but the loans approved under this Program must be to distressed or underserved markets. To encourage lenders to make these loans, SBA provides its standard 75–85 percent guaranty, which contrasts to the 50 percent guaranty the Agency provides under SBAExpress. However, under CommunityExpress participating lenders must arrange, and when necessary, pay for appropriate technical assistance for any borrowers under the program. Maximum loan amounts under this Program are limited to $250,000. SBA previously extended CommunityExpress until March 31, 2007 (71 FR 74982), to consider possible changes and enhancements to the Program.

The further extension of this program until December 31, 2007, will allow the SBA to complete its analysis and internal discussions of possible changes and enhancements to the program. It will also allow SBA to further consult with its lending partners, the small business community and its oversight authorities about the Program.

(Authority: 13 CFR 120.3)

Janet A. Tasker,

Acting Director Office of Financial Assistance.

[FR Doc. E7–5138 Filed 3–20–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

North Florida District Advisory Council; Notice of Federal Advisory Public Meeting

The U.S. Small Business Administration North Florida District Advisory Council located in Jacksonville, Florida, will host a public federal advisory meeting on Thursday, March 29, 2007 at 12 p.m. EST. The meeting will be held at the Governor's Club located at 202½ South Adams Street, Tallahassee, FL 32301.

The purpose of the meeting is to discuss board briefings and an overview of SBA loans and FY 2007 goals presented by Mark Wilson, Executive Vice President, Florida Chamber of Commerce.

The meeting is open to the public. Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than Monday, March 26, 2007, in order to be placed on the agenda. Wilfredo J. Gonzalez, District Director, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100B, Jacksonville, FL 32256 telephone (904) 443–1900; or fax (904) 443–1980.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–5081 Filed 3–20–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces that the Information Collection Request (ICR) abstracted below which will be forwarded to the

Office of Management and Budget (OMB) for renewal. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 26, 2006 [Vol. 71, No. 186, Page 56212]. No comments were received.

DATES: Comments on this notice must be received by April 20, 2007 and sent to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or *oira_submission@omb.eop.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Title: Use and Change of Names of Air Carriers, Foreign Air Charters, and Commuter Air Carriers, 14 CFR part 215.

OMB Control Number: 2106–0043.

Affected Entities: Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

Frequency of response: On occasion.

Number of respondents: 13.

Annual Estimated Total Burden on Respondents: 65 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC on March 15, 2007.

Patricia Lawton,

IT Investment Management Office, U.S. Department of Transportation.

[FR Doc. E7–5146 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15962]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice; correction.

SUMMARY: The Office of the Secretary published a document in the **Federal Register** on September 26, 2006, concerning a request for an extension of a previously approved information collection. We are correcting the document as set forth below. Also, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces that the Information Collection Request (ICR) abstracted below which will be forwarded to the Office of Management and Budget (OMB) for renewal. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 26, 2006 [Vol. 71, No. 186, Page 56213]. No comments were received.

DATES: Comments on this notice must be received by April 20, 2007 and sent to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or *oira_submission@omb.eop.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Correction

In the September 26, 2006, **Federal Register** [71 FR 56213], correct the Number of Respondents and Annual Estimated Burden Hours on Respondents.

SUPPLEMENTARY INFORMATION:

Title: Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR Part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code—(Amended); 14 CFR Part 204—Data to Support Fitness Determinations; 14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

OMB Control Number: 2106–0023.

Affected Entities: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Frequency of Response: On occasion.

Number of Respondents: 94.

Annual Estimated Burden Hours on Respondents: 9,604 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC, on March 15, 2007.

Patricia Lawton,

IT Investment Management Office, U.S. Department of Transportation.

[FR Doc. E7–5147 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 Meeting: Portable Electronic Devices.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on April 17–19, 2007, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

Primary Purpose of Meeting: The plenary is to review initial draft materials for the Recommended Guidance for Airplane Design and Certification document, leading to

committee consensus on a draft for Final Review and Comment (FRAC). The committee will also consider plans for coordination and implementation of its recommendation on T-PED spurious emissions. Working group sessions are on Tuesday and Thursday afternoon. Plenary Sessions are Wednesday and Thursday.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 Portable Electronic Devices meeting. The agenda will include:

- April 17:
- Chairmen's Strategy Session—MacIntosh-NBAA & Hilton-ATA Rooms
- Progress and Status Update, Overall Review of Plan and Schedule for Document Completion, recommendations coordination and implementation
- Working Group 5 Kickoff and Coordination—MacIntosh-NBAA & Hilton-ATA Rooms
- Working Groups Sessions
- Working Group 5 Overall DO-YYY Document—MacIntosh-NBAA & Hilton-ATA Rooms
- Working Group 6: PED Spurious Emissions Recommendations—ARINC Conference Room
- Sub Group on PED Statistical Analysis and Characterization—Small Conference Room
- Sub Group on IPL Test—Colson Board Room
- Sub Group on Certification Aspects—Garmin Room
- Chairmen's Strategy Session
- Coordinate Recommendations to Plenary: Plan and Schedule for Remaining Committee Work.
- April 18 and 19:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Summary)
- Results of RTCA PMC Meeting March 22, 2007 on revisions to SC–202 TOR
- Update from Regulatory Agencies (FAA, UK–CAA, Canadian TSB, FCC, or others present)
- Update on EUROCAE Working Group WG58 Status
- Update on CEA activities, including the CEA Bulletin-Recommended Practice for T–PEDs
- Overview of Work on DO–YYY ''Aircraft Design and Certification for Portable Electronic Device (PED) Tolerance''
- Update on Aircraft IPL Test Methods by WG5 Sub Group
- Update on Target IPL Values for aircraft design by WG5 IPL Sub Group
- Summary of PED Emissions Statistical Characterization by WG5–T–PED Characterization Sub Group
- Summary of Certification Aspects WG5 Certification Sub Group
- Working Group 5: Airplane Design and Certification Guidance
- Plan to complete remaining work, schedule and process for completion of open issues, recommendation to publish FRAC draft, identify any risks to completing final document at the July Plenary and proposed action to mitigate that risk
- Working Group 6: PED Spurious Emissions Recommendations Coordination
- Implementation Assessment (joint working group with CEA)
- Schedule and plan for dialog with CE manufactures
- Committee Discussion on Final Phase 2 Work Plan and Schedule for DO–YYY Document
- Committee Discussion on Final Phase 2 Work Plan and Schedule for DO–YYY Document
- Break-out Session for WG's Required
- WG5 Overall Document and Process—MacIntosh—NBAA & Hilton-ATA-Rooms
- WG6 PED Spurious Emissions Recommendation—ARINC Conference Room
- Sub Group on PED Statistical Analysis and Characterization—Small Conference Room
- Sub Groups on IPL Test—Colson Board Room
- Sub Group on Certification Aspect—Garmin Room
- April 19
- Chairman's Day 2 Opening Remarks and Process Check
- Final Overall Working Group Report
- Identification and Plan for Closure of Open Issues
- Remaining work plan and Schedule for Completion of DO–YYY
- Recommendation on publication of FRAC draft
- Working Group 5 Airplane Design and Certification Guidance recommendation for FRAC
- Working Group 6 PED Spurious Emissions Recommendations (reporting on plan for completion of recommendations coordination and implementation)
- Plenary Consensus on Plans to:
- DO–YYY Recommended Guidance for Airplane Design and Certification ready for FRAC
- WG6 plan to coordinate and implement PED Spurious Emissions Recommendations
- Closing Session (Other Business, Date and Place of Upcoming Meetings (Nineteenth Plenary at RTCA, July 23–27, 2007,)
- Complete Disposition of FRAC comments on draft Airplane Design & Guidance Recommendation draft
- Committee consensus to recommend publication of DO–YYY
- CEA/SC–202 Consenses Recommendation for implementation of SC–202 recommendation
- Plenary Session Tuesday & Thursday, WG Monday, Wednesday, Friday
- Adjourn to Break-out sessions for Working Groups if required and time permits

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 13, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–1343 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2005–23281, Notice No. 4]

Safety of Private Highway-Rail Grade Crossings; Notice of Safety Inquiry

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety inquiry.

SUMMARY: On July 27, 2006, FRA published a notice announcing its intent to conduct a series of open meetings throughout the United States, in cooperation with appropriate State agencies, to consider issues related to the safety of private highway-rail grade crossings. To date, FRA has conducted four meetings and on January 5, 2007, FRA published a notice announcing the scheduling of an additional meeting to be held February 15, 2007, in Syracuse, New York. Due to inclement weather, it was necessary to reschedule the February 15 meeting for April 26, 2007.

At the meeting, FRA intends to solicit oral statements from private crossing owners, railroads and other interested parties on issues related to the safety of private highway-rail grade crossings,

which will include, but not be limited to, current practices concerning responsibility for safety at private grade crossings, the adequacy of warning devices at private crossings, and the relative merits of a more uniform approach to improving safety at private crossings. FRA has also opened a public docket on these issues so that interested parties may submit written comments for public review and consideration.

DATES: The fifth public meeting will be held in Syracuse, New York on April 26, 2007, at the Renaissance Syracuse Hotel, 701 East Genesee Street, Syracuse, New York 13210, beginning at 9:30 a.m.

Persons wishing to participate are requested to provide their names, organizational affiliation and contact information to Michelle Silva, FRA Docket Clerk, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6030). Persons needing sign language interpretation or other reasonable accommodation for disability are also encouraged to contact Ms. Silva at the above-referenced telephone number.

FOR FURTHER INFORMATION CONTACT: Ron Ries, FRA Office of Safety, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6299); Miriam Kloeppel, FRA Office of Safety, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton, FRA Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: For additional information, please see the initial notice published July 27, 2006 in the **Federal Register** (71 FR 42713) and available at *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06–6501.pdf.*

Request for Comments

While FRA solicits discussion and comments on all areas of safety at private highway-rail grade crossings, we particularly encourage comments on the following topics:

- At-grade highway-rail crossings present inherent risks to users, including the railroad and its employees and other persons in the vicinity, should a train derail into an occupied area or release hazardous materials. When passenger trains are involved, the risks are heightened. From the standpoint of public policy, how do we determine whether the creation or continuation of a private crossing is justified?
- Is the current assignment of responsibility for safety at private crossings effective? To what extent do risk management practices associated with insurance arrangements result in ''regulation'' of safety at private crossings?
- How should improvement and/or maintenance costs associated with private crossings be allocated?
- Is there a need for alternative dispute resolution mechanisms to handle disputes that may arise between private crossing owners and the railroads?
- Should the State or Federal government assume greater responsibility for safety at private crossings?
- Should there be nationwide standards for warning devices at private crossings or for intersection designs of new private grade crossings?
- How do we determine when a private crossing has a ''public purpose'' and is subject to public use?
- Should some crossings be categorized as ''commercial crossings'' rather than as ''private crossings?''
- Are there innovative traffic control treatments that could improve safety at private crossings on major rail corridors, including those on which passenger service is provided?
- Should the Department of Transportation request the enactment of legislation to address private crossings? If so, what should it include?

Issued in Washington, DC, on March 15, 2007.

Jo Strang,

Associate Administrator for Safety.

[FR Doc. E7–5143 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT Docket No. NHTSA–06–26554]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: This notice solicits public comment on continuation of the requirements for the collection of information on safety standards. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information associated with 49 CFR Part 574, Tire Identification and Recordkeeping.

DATES: Comments must be received on or before April 20, 2007.

ADDRESSES: Comments must refer to the docket notice number cited at the beginning of this notice and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Att'n: Desk Officer for NHTSA, 725 17th Street, NW., Washington, DC 20503. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection may be obtained from Mr. George Soodoo, NVS–122, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Mr. Soodoo's telephone number is (202) 366–5274.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

The agency published the 60-day notice on December 8, 2006 (71 FR 712380). In addition to asking for comments on the above issues, the notice included eight additional questions that were specific to the information collection requirements for new tires. The eight questions related to quantifying the effectiveness of the current requirements and considerations for the use of alternate methods such as electronic registration of new tires that might improve the tire registration rate. In response to the notice, comments were received from the following organizations: National Automobile Dealers Association (NADA); Rubber Manufacturers Association (RMA); Computerized Information & Management Services, Inc. (CIMS); National Tire Registry Recall.Com (NTRR); and Tire Industry Association (TIA). A short summary of each respondent's comments is provided below.

RMA stated that the continued registration of new tire purchasers is a critically important safety issue so that consumers can be notified in the event of a product recall or other safety problem. However, it urges NHTSA to either interpret or revise Part 574 to allow an electronic alternative to the current paper card system. RMA has data showing that less than 10 percent of tire registration cards are currently being returned to the tire manufacturer and many of these cards are inaccurate, incomplete, or illegible. RMA requests that NHTSA interpret or amend the current regulations in the following areas:

1. Modify the paper form to include instructions for consumers to register the tires at the tire manufacturer's Web site. Also, permit on a voluntary basis the electronic registration of tires at the point of sale.

2. The current regulation only requires [independent] distributors to provide the form to first purchasers with the tire identification number and the dealer's name and address. Any revisions to the regulations to permit electronic or point-of-sale registration should not create any new or additional obligations for tire dealers or distributors by requiring them to register the tires.

3. The tire manufacturer obligations should remain the same under revision of this regulation. They should only be required to continue to provide the paper forms to tire dealers and distributors and, upon receipt of the forms, retain the consumer information for five years.

4. Through a NHTSA interpretation letter, a supplemental method of tire registration is permitted. However, the agency should amend its regulations to provide information for website registration directly on the existing paper form.

RMA requests that the agency make these changes expeditiously, either through additional interpretation letters or by opening a new rulemaking.

NADA generally supports the comments filed by RMA with regard to revising the regulations to permit website registration of tires, and refers to the agency's provisions for electronic registration of child safety seats in 49 CFR 571.213 as being instructive in this regard. In addition to allowing registration by Web site or fax, NADA stated that tire dealers should also be permitted to register the tires for the consumer, upon obtaining permission or a release from the consumer to do so.

NADA noted that it has stated in past information collection renewals that franchised automobile and truck dealers act as independent tire dealers as well. NADA questioned in those prior renewals, and also in the current one, why the agency estimtes that there are only 12,000 new tire dealers and distributors, when there are 20,000 franchised automobile and truck dealers.

CIMS stated that it provides tire registrations services to over 80 percent of tire manufacturers/brand owners in the replacement tire market and to over 12,000 tire dealers and distributors. CIMS is opposed to making changes to the existing tire registration regulations. CIMS stated that the current tire registration regulations are working, and that independent tire dealers using the CIMS All Brand Form can comply with the tire registration regulation for one penny or less per tire. Allowing electronic registration of tires will only cause more confusion, will remove the tire purchasers rights and ability to ensure that their tires are registered, and will increase the liability of independent tire dealers if the tire registration information is not completely transmitted to the tire manufacturer or if they jeopardize the privacy of tire purchaser information. CIMS indicated that tire registrations by year are as follows:

1997—37,000,000
2000—41,000,000 (Prior to Ford/Firestone recall)
2003—54,000,000 (corresponds with NHTSA estimates, Docket No. 06–26554)
2006—59,000,000

CIMS states that there will be added costs associated with electronic tire registration including developmental costs, software upgrades and employee training.

NTRR believes that changes are needed and that electronic registration over the internet would enhance public safety and would be consistent with paperwork reduction act priorities. Allowing electronic registration would also improve registration rates over the current methods. The July 18, 2003 interpretation letter from NHTSA to RMA leaves unanswered the extent to which electronic registration and other alternatives to paper forms can be used in compliance with 49 CFR Part 574. NTRR also noted that the tire registration from specified in 49 CFR Part 574 does not display the required OMB control number, nor does the agency adequately address privacy and confidentiality concerns under the PRA. NTRR recommends electronic registration in lieu of the paper forms.

TIA stated that it has worked closely with the RMA in reviewing the need to revise the current tire registration regulations in 49 CFR Part 574, and that it agrees with the four principles identified by RMA for revisions to the regulations. TIA states that any revisions to the regulations should not create any new or additional obligations for tire dealers and thus should not required the tire dealers to register the tires. Many TIA member tire dealers endorse electronic registration and are already doing so. NHTSA should adopt the changes recommended by RMA as quickly as possible.

Agency Evaluation of Comments: Upon reviewing the comments submitted in response to the 60-day notice, the agency is considering revisions to update 49 CFR Part 574 to provide, to the extent consistent with the agency's authority, allowances for electronic and other possible means of registering new tires at the point of sale. First, the agency will consider the inclusion of Web site registration information to be placed on the tire registration form in 574.7. Second, the agency plans to update the registration form to include the OMB control number. Third, the agency will fully evaluate what appropriate regulations are permissible to allow independent tire dealers to electronically register the tires on a voluntary basis for the consumer, within the requirements specified in Title 49, USC Chapter 301, Section 30117—providing information to, and maintaining records on, purchaser. Therefore, the agency will undertake rulemaking in 2007 to address these issues and provide the public with the opportunity to comment on the proposed changes. Based on the

information in the public record and the comments received in response to the 60-day notice, the agency believes that it will be appropriate to issue a proposed rule.

The agency also reviewed the comments to determine if any information was submitted that would allow refinement of the agency's estimate for the burden of performing tire registrations. NADA commented that its member automobile and truck dealers, numbering 20,000, also act as independent tire dealers. NADA attached prior comments that it had made on the issue of tire registrations, and its comments dated September 1, 2000 stated that the total number of automobile and truck dealers was 22,500, but NADA did not know how many of these dealers were selling aftermarket tires that would qualify them as independent tire dealers. NADA stated that these dealers routinely provide new vehicle purchaser information to the vehicle manufacturer. However, the agency notes that under 574.9(b), these dealers are only required to provide tire registration forms to purchasers of new vehicles only if the tires were not on the motor vehicle when it was shipped b y the vehicle manufacturer. NADA did not provide any data on how frequently this occurs.

NADA also submitted comments stating that its automobile and truck dealers act as independent tire dealers when selling new, non-original tires on new vehicles, new tires on used vehicles, and/or new tires to service customers. Here again, NADA did not state how many of their dealers actually sell tires, but the agency assumes that all of them do have tire mounting equipment so they are likely to be engaged in such practice. This will add 20,000 tire dealers to the agency's estimate.

The agency searched the Modern Tire Dealers Web site for data and found that its statistics indicated that there are approximately 26,000 independent tire dealers.[1] Based on previous agency estimates that two-thirds of tire dealers are independent and one-third are non-independent, this would account for an additional 13,000 non-independent tire dealers.

Thus, the agency's new estimate for the number of affected tire dealers is as follows:

Independent Tire Dealers	26,000
Non-Independent Tire Dealers	13,000
Automobile and Truck Dealers	20,000
Total Number of Tire Dealers	59,000

In the 60-day notice, the estimated number of affected tire manufacturers was eight. We have done additional market research and now believe that number is low and the total number of tire manufacturers selling tires in the United States is closer to 20. Although the agency's Web site includes listings of 152 tire brands, most of these are private label brands whose tires are manufactured by the 20 tire manufacturers. The agency welcomes comments on this revised estimate.

No other comments were received on the accuracy of the agency's burden estimates, so the agency is not revising the remaining figures that were published in the 60-day notice.

The agency notes that incorrect information was provided in the 60-day notice regarding the length of time that tire manufacturers are required to retain the information provided by tire purchasers on the tire registration forms. The agency stated that this information is to be retained for three years, but as required in 49 CFR 574.7(d), the information must be retained for not less than five years. In addition, vehicle manufacturers are required to maintain records of the new tires on motor vehicles shipped by that manufacturer for not less than five years as required in 49 CFR 574.10(d).

In compliance with the requirements in 5 CFR part 1320, the agency requests comments on the following proposed collection of information:

Title: 49 CFR Part 574, Tire Identification and Recordkeeping.

OMB Control Number: 2127–0050.

Form Number: None.

Requested Expiration Date of Approval: Three years from approval date.

Type of Request: Extension of a currently approved collection.

Summary of the Collection of Information: 49 U.S.C. 30117(b) requires each tire manufacturer to collect and maintain records of the first purchasers of new tires. To carry out this mandate, 49 CFR part 574 requires tire dealers and distributors to record the names and addresses of retail purchasers of new tires and the identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms are returned to the tire manufacturers where they are retained for not less than five years. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers (for purposes other than resale), together with the identification numbers of the tires on the new vehicles, and retain this information for not less than five years.

The Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (Pub. L. 97–311) prohibited NHTSA from enforcing the mandatory tire registration provisions in 49 CFR part 574 against dealers and distributors whose business is not owned or controlled by a tire manufacturer (hereinafter referred to as ''independent dealers''). For independent dealers, Congress specified that a voluntary registration system would take effect as soon as this agency specified the format and content of the voluntary tire registration forms and standardized the information for all independent dealers. Rulemaking was completed in 1984 to standardize the forms.

The previously specified mandatory tire registration requirements remain applicable to all dealers and distributors other than independent dealers and the requirements for tire and vehicle manufacturers are unchanged.

Description of the Need for the Information and the Proposed Use of the Information: The information is used by a tire manufacturer, when it determines that some of its tires either fail to comply with an applicable safety standard or contain a safety related defect. With the information, the tire manufacturer can notify the first purchaser of the tire and provide the purchaser with any necessary information or instructions.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): It is estimated that this collection of information affects 10 million respondents annually. This group consists of approximately 20 tire manufacturers, 59,000 new tire dealers and distributors, and 10 million consumers who choose to register their tire purchases with the tire manufacturers. A response is required by motor vehicle manufacturers upon each sale of a new vehicle and by non-independent tire dealers with each sale of a new tire. A consumer may elect to respond when purchasing a new tire from an independent dealer.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The estimated burden is as follows:

New tire dealers and distributors	59,000
Consumers	10,000,000
Total tire registrations (manually)	54,000,000

[1] See *http://www.moderntiredealer.com/t__pop__pdf.cfm?link=research/dts__v2.pdf.*

Total tire registration hours (manual)	[1] 225,000
Recordkeeping hours (manual)	[1] 25,000
Total annual tire registration and recordkeeping hours	[1] 250,000

[1] Hours.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50

Issued on: March 16, 2007.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. 07–1385 Filed 3–20–07; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 15, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before April 20, 2007 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0091.

Type of Review: Extension.

Title: Tobacco Products Manufacturers—Notice for Tobacco Products, TTB REC 5210/12 and Records of Operations, TTB REC 5210/1.

Form: TTB 5210/1, 5210/12.

Description: Tobacco products manufacturers maintain a record system showing tobacco and tobacco product receipts, production, and dispositions which support removals subject to tax, transfers in bond, and inventory records. These records are vital to tax enforcement.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 1 hours.

OMB Number: 1513–0108.

Type of Review: Extension.

Title: Recordkeeping for Tobacco Products and Cigarette Papers and Tubes Brought from Puerto Rico to the U.S. 27 CFR 41.105, 41.106, 41.109, 41.110, 41.121.

Description: The prescribed records apply to persons who ship tobacco products or cigarette papers or tubes from Puerto Rico to the United States. The records verify that the amount of taxes to be paid and if required, that the bond is sufficient to cover unpaid liabilities.

Respondents: Business and other for-profit.

Estimated Total Burden Hours: 1 hours.

OMB Number: 1513–XXXX.

Type of Review: Regular.

Title: Permit Application Questions, Amended Permit Application Questions, Claims Questions.

Description: Alcohol and Tobacco Tax and Trade Bureau (TTB), in an ongoing effort to improve its Customer Service, intends to survey its customers and keep track of its progress, as well as identify potential needs, problems, and opportunities for improvement. The respondents will be businesses that hold permits with TTB and permit holders that file claims with TTB. There is no cost to respondents other than their time.

Respondents: Business and other for-profits.

Estimated Total Burden Hours: 625 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E7–5172 Filed 3–20–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs is amending the system of records currently entitled ''Program Evaluation Research Data Management Records—VA'' (107VA008B) as set forth in the **Federal Register** 66 FR 29633–35. VA is amending the system by revising the System Name; System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Purpose(s); Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System; System Manager and Address(es): Notification Procedures; Record Access Procedure(s); Contesting Records Procedures; and Record Source Categories. VA will be publishing a new system of records notice to cover evaluation of non-health information. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than April 20, 2007. If no public comment is received, the new system will become effective April 20, 2007.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System.

FOR FURTHER INFORMATION CONTACT: Dat Tran, Director, Office of Data Development and Analysis, (008A3), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6482.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

While this System of Records has been amended to reflect the current organizational alignment, its number remains 107VA008B. The System Name is changed from ''Program Evaluation Research Data Management Records—VA'' to ''Health Program Evaluation—VA'' to more accurately reflect the scope of activity conducted with data from this system of records.

This System of Records has been refocused to apply to data gathered from all VA components, including protected health information (PHI) supplied by the Veterans Health Administration (VHA) that is needed to conduct data collection, storage and analyses on behalf of VHA for program evaluations, and analysis including descriptions of the utilization of services, demographic profiles of service or benefit users, utilization projections, forecasting, and trend analyses, and other analyses that characterize patterns of utilization, costs, and future service needs. A more complete description of the duties and activities of Office of Policy and Planning (OPP) are at *http://www1.va.gov/op3/docs/008_org.pdf.* OPP receives, maintains and uses VHA PHI under a Business Associate Agreement (BAA) between VHA and OPP. OPP receives, maintains, uses and discloses information from this system of records in accordance with these Rules. VHA periodically reviews the handling of its data to ensure that the requirements of these Rules are met.

The Safeguards section has been updated to reflect the additional security requirements and restrictions on the use of health information obtained from the Veterans Health Administration (VHA) in compliance with requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules, 45 CFR Parts 160 and 164. The Privacy and Security Rules became effective after the date of initial publication of this system of records. This portion of the amendment documents privacy and security procedures implemented earlier to reflect the requirements of these Rules.

The Department has made minor edits to the System Notice for grammar and clarity purposes to reflect plain language, including changes to routine uses. These changes are not, and are not intended to be, substantive, and are not further discussed or enumerated.

II. Proposed Amendments to Routine Use Disclosures of Data in the System

A statement clarifying that the routine use disclosure statements in this system of records does not provide authority for VA to disclose individually identifiable health information protected by 38 U.S.C. 7332 or the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule has been added. This means VA must have disclosure authority under 38 U.S.C. 7332, HIPAA, or both, where applicable, before disclosure under any routine use for data covered by these provisions. Further, routine uses are amended to provide consistency with the standards defined by Department of Health and Human Services under HIPAA.

Routine use number 1 clarifies the scope of records that can be disclosed.

Routine use number 2 is clarified as to the scope of records that can be disclosed.

Routine use number 3 is revised to specify the privacy requirements and information use safeguards as required by OPP when records are shared with other Federal agencies for their use or for OPP information matching needs.

Routine use number 4 is revised to specify the privacy requirements and information use safeguards as required by OPP when records are shared with contractors, consultants, and collaborating analysts who have been engaged by the VA.

Routine use number 5 specifies that system records may be disclosed to the Office of Management and Budget.

Routine use number 6 states that records may be disclosed to ensure data security, and to respond to a suspected compromise of covered data, including efforts to remedy any potential harm from the compromise. Section 5724 of title 38, United States Code, requires such actions. Also, in determining whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'', currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

Routine use number 7 is clarified as to the scope of records that can be disclosed to the Department of Justice (DoJ).

Routine use number 8 is clarified as to the scope of records that can be disclosed for law enforcement purposes.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 6, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

107VA008B

SYSTEM NAME:

Health Program Evaluation—VA.

SYSTEM LOCATION:

The system of records is located in office of the Director, Office of Data Development and Analysis, (008A3), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Records are stored on a secured server computer at the VA Austin Automation Center, 1615 Woodward Street, Austin, Texas 78722. Records not stored at the VA Austin Automation Center are stored on electronic media or laser optical media in a combination-protected safe which is secured inside a key-accessed room at the U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Records necessary for a contractor to perform analyses under a contract are located at the respective contractor's secure facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for healthcare services or benefits under Title 38, United States Code.

2. Veterans' spouse, surviving spouse, previous spouse, children, and parents who have applied for healthcare services or benefits under Title 38, United States Code.

3. Beneficiaries of other Federal agencies or other governmental entities.

4. Individuals examined or treated under contract or resource sharing agreements.

5. Individuals examined or treated for research or donor purposes.

6. Individuals who have applied for Title 38 benefits but who do not meet the requirements under Title 38 to receive such benefits.

7. Individual who were provided medical care under emergency conditions for humanitarian reasons.

8. Pensioned members of allied forces provided healthcare services under Title 38, United States Code.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include identification numbers, contact and location information, demographic information, military service descriptions, residency characteristics, economic information, healthcare visit descriptions, patient

assessments, medical test descriptions and results, diagnoses, disability assessments, treatments, pharmaceutical information, service utilization and associated medical staffing and resource costs, entitlements or benefits, patient survey results, and health status. The records include information created or collected during the course of normal clinical operations work and is provided by patients, employers, students, volunteers, contactors, subcontractors, and consultants. In addition, records also include social security numbers, military service numbers, claim or file numbers, and DoD's identification numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C 527.

PURPOSE(S):

Health-related qualitative, quantitative, and actuarial analyses and projections to support policy analyses and recommendations to improve VA services for veterans and their families. Analysis and review of policy and long-term planning issues affecting veterans programs to support legislative, regulatory and policy recommendations and initiatives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, i.e., individually identifiable health information, 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, or both, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Any system records disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

2. Any system records disclosure may be made to the National Archives and Records Administration as required in records management inspections under title 44 U.S.C.

3. Any system records may be disclosed to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and OPP has determined prior to the disclosure that OPP data handling requirements are satisfied. OPP may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for OPP to use for the purposes stated for this system of records.

4. Any system records may be disclosed to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

5. Any system records may be disclosed to the Office of Management and Budget in order for them to perform their statutory responsibilities of evaluating Federal programs.

6. Any records may be disclosed to appropriate agencies, entities, and persons under the following circumstances: When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

7. VA may disclose information in this system of records to the Department of Justice, either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

In determining whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'', currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

8. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

VA sensitive information, including individually identifiable health information, is stored on electronic media, laser optical media, on a segregated secure server or in paper form. Data stored on a secure server are located at the Austin Automation Center. Electronic media, or laser

optical media data are kept locked in a safe when not in immediate use. The safe is secured inside a key-accessed room at OPP. Information stored on paper is kept locked in file cabinets when not in immediate use. Databases are temporarily placed on a secured server inside a restricted network area for data match purposes only. Information that resides on a segregated server is kept behind locked doors with limited access. Requestors of OPP stored health information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with all applicable VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to VA Directive 6504.

RETRIEVABILITY:

Individually-identified health care information is kept in two forms. The first form is the original data file containing the names and social security numbers of the record subjects. OPP assigns unique codes derived from social security numbers to these individual records prior to conducting analyses on the data. The encryption key for social security numbers and other numerical identifiers of the individuals is stored in a safe in OPP. The original records may be retrieved using social security numbers, military service number, claim or file number, DoD's identification numbers, or other personal numerical identifiers. The records containing the encrypted identifiers may be retrieved only by those identifiers.

SAFEGUARDS:

This list of safeguards furnished in this System of Record is a general statement of measures taken to protect health information. For example, HIPAA guidelines for protecting health information will be followed and OPP will adopt evolving health care industry best practices in order to provide adequate safeguards. Further, VA policy directives that specify the standards that will be applied to protect health information will be provided to VA staff and contractors through mandatory data privacy and security training.

Access to data storage areas is restricted to authorized VA employee or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. Health information file areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel.

Access to health information provided by the Veterans Health Administration (VHA) pursuant to a Business Associate Agreement (BAA) is restricted to those OPP employees and contractors who have a need for the information in the performance of their official duties related to the terms of the BAA. As a general rule, full sets of health care information are not provided for use unless authorized by the OPP Assistant Secretary. File extracts provided for specific official uses will be limited to the minimum necessary amount and contain only the information fields needed for the analysis. Data used for analyses will have individual identifying characteristics removed whenever possible.

Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Health information files containing unique identifiers such as social security numbers are encrypted to NIST-verified FIPS 140–2 standard or higher for storage, transport, or transmission. All files stored or transmitted on laptops, workstations, data storage devices and media are encrypted. Files are kept encrypted at all times except when data is in immediate use, per specifications by VA Office of Information Technology. NIST publications were consulted in development of security for this system of records.

Contractors and their subcontractors are required to maintain the same level of security as VA staff for health care information that has been disclosed to them. Any data disclosed to a contractor or subcontractor to perform authorized analyses requires the use of Data Use Agreements, Non-Disclosure Statements and Business Associates Agreements to protect health information. Unless explicitly authorized in writing by the VA, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any other person. Other federal or state agencies requesting health care information need to execute Data Use Agreements to protect data.

OPP's work area is accessed for business-only needs. For data that is not stored on a secure server, the data is stored in a combination-protected safe which is secured inside a limited access room. Direct access to the safe is controlled by select individuals who possess background security clearances. Only a few employees with strict business needs or ''need-to-know'' access and completed background checks will ever handle the data once it is removed from the safe for data match purposes.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. If the Archivist has not approved disposition authority for any records covered by the system notice, the System Manager will take immediate action to have the disposition of records in the system reviewed and paperwork initiated to obtain an approved records disposition authority in accordance with VA Handbook 6300.1, Records Management Procedures. OPP will publish an amendment to this notice upon issuance of NARA-approved disposition authority. The records may not be destroyed until VA obtains an approved records disposition authority. OPP destroys electronic files when no longer needed for administrative, legal, audit, or other operational purposes. In accordance with title 36 CFR 1234.34, *Destruction of Electronic Records,* ''electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules.''

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Office of Data Development and Analysis, (008A3), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the Director, Office of Data Development and Analysis, (008A3), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Such requests must contain a reasonable description of the records requested. All inquiries must reasonably identify the health care information involved and the approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, telephone number and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA health information maintained by the Office of Policy and Planning may send a request by mail to the Director, Data Development and Analysis Service, (008A3), Department of Veterans

Affairs, 810 Vermont Ave., Washington, DC 20420

CONTESTING RECORDS PROCEDURES:

(See Notification procedure above.)

RECORD SOURCE CATEGORIES:

Information is obtained from VHA and other VA staff offices and Administrations, OPP's National Survey of Veterans, national surveys (*e.g.*, National Long Term Care Survey, National Health Interview Survey), Federal agencies (*e.g.*, Department of Defense, Department of Health and Human Services), state agencies, and other private and public health provider or insurance programs and plans.

[FR Doc. E7–5135 Filed 3–20–07; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 72, No. 54

Wednesday, March 21, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Port Canaveral Navigation Improvements Section 203 Feasibility Study Located in Brevard County, FL

Correction

In notice document 07–1278 beginning on page 12598 in the issue of Friday, March 16, 2007, make the following corrections:

1. On page 12598, in the second column, in lettered paragraph c., in the tenth line, ''(2) reduce'' should read ''(1) reduce''.

2. On page 12599, in the first column, in lettered paragraph h., ''and Wildlife Service under Section 7 of'' should read ''and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of''.

[FR Doc. C7–1278 Filed 3–20–07; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA–HQ–OAR–2005–0036; FRL–8278–4]

RIN 2060–AK70

Control of Hazardous Air Pollutants From Mobile Sources

Correction

In rule document E7–2667 beginning on page 8428 in the issue of Monday, February 26, 2007, make the following correction:

§ 86.1811–09 [Corrected]

On page 8564, in § 86.11–09(t)(2), in the second column, in Table S09–5, in the column heading for the first column, ''Model Year of Introduction 2010'' should read ''Model Year of Introduction''.

[FR Doc. Z7–2667 Filed 3–20–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2006–24414]

RIN 1625–AB05

Rates for Pilotage on the Great Lakes

Correction

In rule document E7–3061 beginning on page 8115 in the issue of Friday, February 23, 2007, make the following corrections:

1. On page 8124, the tables entitled ''District One'' and ''District Two'' are corrected to read as set forth below.

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total district one
Pilot Compensation	$1,368,253	$825,760	$2,194,013
Expense Multiplier	× .31169	× .52779	× .39283
Projected Increase in Operating Expense	=$426,468	=$435,829	=$861,881

DISTRICT TWO

	Area 4 Lake Erie	Area 5 south-east Shoal to Port Huron, MI	Total district two
Pilot Compensation	$825,760	$1,596,295	$2,422,055
Expense Multiplier	× .61678	× .46605	× .51731
Projected increase in Operating Expense	=$509,310	=$743,956	=$1,252,960

2. On page 8125, at the top of the page, the table entitled ''District Three'' is corrected to read as set forth below.

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total district three
Pilot Compensation	$1,651,520	$912,168	$1,156,064	$3,719,752
Expense Multiplier	× .49543	× .34956	× .44178	× .44290
Projected Increase in Operating Expense	=$818,205	=$318,861	=$510,730	=$1,647,478

§ 401.407 [Corrected]

3. On page 8131, in § 401.407(a), the table is corrected to read as set forth below.

Service	Lake Erie (east of Southeast Shoal)	Buffalo
Six-Hour Period	$641	$641
Docking or Undocking	494	494
Any Point on the Niagara River below the Black Rock Lock	N/A	1,261

4. On the same page, in § 401.407(b), the table is corrected to read as set forth below.

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,699	$1,004	$2,206	$1,699	N/A
Port Huron Change Point	[1] 2,959	[1] 3,428	2,223	1,729	$1,229
St. Clair River	[1] 2,959	N/A	2,223	2,223	1,004
Detroit or Windsor or the Detroit River	1,699	2,206	1,004	N/A	2,223
Detroit Pilot Boat	1,229	1,699	N/A	N/A	2,223

[1] When pilots are not changed at the Detroit Pilot Boat.

[FR Doc. Z7–3061 Filed 3–20–07; 8:45 am]

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Federal Register

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March 21, 2007

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 the Spikedace (Meda fulgida) and the Loach Minnow (Tiaroga cobitis); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Spikedace (Meda fulgida) and the Loach Minnow (Tiaroga cobitis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 522.2 river miles (mi) (840.4 kilometers (km)) are designated as critical habitat. Critical habitat is located in Catron, Grant, and Hidalgo Counties in New Mexico, and Apache, Graham, Greenlee, Pinal, and Yavapai Counties in Arizona.

DATES: This final rule is effective April 20, 2007.

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 U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. The final rule, economic analysis, environmental assessment, and more-detailed color maps of the critical habitat designation are also available via the Internet at *http://www.fws.gov/arizonaes/.* Geographic Information System (GIS) files of the critical habitat maps are also available via the Internet at *http://criticalhabitat.fws.gov/.*

FOR FURTHER INFORMATION CONTACT: Steven L. Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951 (telephone 602–242–0210; facsimile 602–242–2513). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to designation of critical habitat in this rule. For more information on the spikedace or the loach minnow, refer to the previous final critical habitat designation for the spikedace and loach minnow published in the **Federal Register** on April 25, 2000 (65 FR 24328).

Spikedace

Description and taxonomy. The spikedace is a member of the minnow family Cyprinidae. The spikedace was first collected in 1851 from the Rio San Pedro in Arizona and was described from those specimens in 1856 by Girard. It is the only species in the genus Meda. The spikedace is a small, slim fish less than 3 inches (in) (75 millimeters (mm) in length (Sublette et al. 1990, p. 136). It is characterized by an olive gray to brownish back and silvery sides with vertically elongated black specks. Spikedace have spines in the dorsal fin (Minckley 1973, pp. 82, 112, 115).

Distribution and Habitat. Spikedace are found in moderate to large perennial streams, where they inhabit shallow riffles (shallow areas in a streambed causing ripples) with sand, gravel, and rubble substrates (Barber and Minckley 1966, p. 321; Propst et al. 1986, p. 12; Rinne and Kroeger 1988, p. 1). Recurrent flooding and a natural hydrograph (physical conditions, boundaries, flow, and related characteristics of water) are very important in maintaining the habitat of spikedace and in helping the species maintain a competitive edge over invading nonnative aquatic species (Minckley and Meffe 1987, p. 103–104; Propst et al. 1986, pp. 3, 81, 85).

The spikedace was once common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Agua Fria, Salt, San Pedro, and San Francisco subbasins. It occupies suitable habitat in both the mainstem reaches and moderate-gradient tributaries, up to approximately 6,500 feet (ft) (2,000 meters (m)) in elevation (Chamberlain 1904, p. 8; Cope and Yarrow 1875, pp. 641–642; Gilbert and Scofield 1898, pp. 487, 497; Miller 1960 and Hubbs, pp. 32–33).

Habitat destruction and competition and predation by nonnative aquatic species have severely reduced its range and abundance. It is now restricted to portions of the upper Gila River and the East, West, and Middle Forks of the Gila River in New Mexico and the middle Gila River, lower San Pedro River, Aravaipa Creek, Eagle Creek, and the Verde River in Arizona (Anderson 1978, pp. 14–17, 61–62; Bestgen 1985, p. 6; Jakle 1992, p. 6; Marsh et al. 1989, pp. 2–3; Paroz et al. 2006, pp. 26, 37–41, 62–67; Propst et al. 1986, p. 1; Sublette et al. 1990, pp. 138–139), and is only commonly found in surveys of Aravaipa Creek and some parts of the upper Gila River in New Mexico (Arizona Game and Fish Department (AGFD) 2004; Arizona State University 2002; Propst 2002, pp. 4, 16–33, Appendix II—Table 2; Propst et al. 1986, p. iv; Rienthal 2006, p. 2). Based on the available maps and survey information, we estimate its present range to be approximately 10 to 15 percent or less of its historical range, and the status of the species within occupied areas ranges from common to very rare. Recent data indicate the population in New Mexico has declined in recent years (Paroz et al. 2006, p. 56). Table 1 summarizes critical habitat areas designated as critical habitat in this final rule for spikedace, as well as potential threats and records of spikedace within those areas.

Loach Minnow

Description and taxonomy. The loach minnow is a member of the minnow family Cyprinidae. The loach minnow was first collected in 1851 from the Rio San Pedro in Arizona and was described from those specimens in 1865 by Girard (pp. 191–192). The loach minnow is a small, slender, elongated fish less than 3 in (80 mm) in length. It is olive colored overall, with black mottling or splotches. Breeding males have vivid red to red-orange markings on the bases of fins and adjacent body, on the mouth and lower head, and often on the abdomen (Minckley 1973, p. 134; Sublette et al. 1990, p. 186).

Distribution and Habitat. Loach minnow are found in small to large perennial streams, and use shallow, turbulent riffles with primarily cobble on the bottom in areas of swift currents (Minckley 1973, p. 134; Propst and Bestgen 1991, p. 32; Propst et al. 1988, pp. 36–43; Rinne 1989, p. 111). The loach minnow uses the space between, and in the lee (sheltered) side of rocks for resting and spawning. It is rare or absent from habitats where fine sediments fill the interstitial spaces (small, narrow spaces between rocks or other substrate) (Propst and Bestgen 1991; p. 33). Recurrent flooding and a natural hydrograph are very important in maintaining the habitat of loach minnow and in helping the species maintain a competitive edge over invading nonnative aquatic species (Propst and Bestgen 1991, pp. 33, 37).

The loach minnow was once locally common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Salt, San Pedro, and San Francisco subbasins (Minckley 1973, p. 133–134; Lee et al. 1980, p. 365). It

occupies suitable habitat in both the mainstem reaches and moderate-gradient tributaries, up to about 8,200 ft (2,500 m) in elevation. Habitat destruction and competition and predation by nonnative aquatic species have severely reduced its range and abundance (Carlson and Muth 1989, pp. 232–233; Fuller et al. 1990, p. 1; Lachner et al. 1970, p. 22; Miller 1961, pp. 365, 377, 397–398; Minckley 1973, p. 135; Moyle 1986, pp. 28–34; Moyle et al. 1986, pp. 416–423; Ono et al. 1983, p. 90; Propst et al. 1988, p. 2, 64). It is now restricted to portions of the upper Gila, the San Francisco, and Tularosa rivers in New Mexico; and the Blue River and its tributaries Dry Blue, Campbell Blue, Little Blue, Pace, and Frieborn creeks; Aravaipa Creek and its tributaries Turkey and Deer creeks; Eagle Creek; East Fork White River; and the Black River and the North Fork East Fork Black River in Arizona (Bagley et al. 1998, pp. 3–6, 8; Bagley et al. 1995, multiple survey records; Barber and Minckley 1966, p. 321; Britt 1982, pp. 6–7; Leon 1989, p. 1; Marsh et al. 1989, pp. 7–8; Paroz et al. 2006, pp. 26, 37–41, 62–67; Propst et al. 1988, pp. 12–17; Propst and Bestgen 1991, p. 29; Propst 1996, multiple survey records; Springer 1995, pp. 6–7, 9–10), and is only common in Aravaipa Creek and the Blue River in Arizona, and limited portions of the upper San Francisco River, the upper Gila River, and Tularosa River in New Mexico (Paroz et al. 2006, pp. 55–60; Propst and Bestgen 1991, pp. 29, 37). The present range of the loach minnow is estimated at 10 percent of its historical range (Propst et al. 1988, p. 12), and the status of the species within occupied areas ranges from common to very rare. Table 1 summarizes critical habitat areas designated for loach minnow, as well as potential threats and records of loach minnow within those areas.

TABLE 1.—LOCATIONS OF SPIKEDACE AND LOACH MINNOW STREAM SEGMENTS DESIGNATED AS CRITICAL HABITAT, THREATS TO THE SPECIES, LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION

Spikedace and/or loach minnow critical habitat areas	Threats	Last year occupancy confirmed	Critical habitat distance in mi (km)	Source
Complex 1—Verde River				
Verde River—Spikedace	Nonnative fish species, grazing, water diversions.	1999	43.0 mi (69.2 km)	AGFD 2004; ASU 2002; Brouder 2002, p. 1.
Complex 2—Black River Complex				
Boneyard Creek—Loach minnow.	Recreational pressures, nonnative fish species, recent fire and related retardant application, ash, and sediment.	1996	1.4 mi (2.3 km)	AGFD 2004; ASU 2002.
East Fork Black—Loach minnow.	Recreational pressures, nonnative fish species, recent fire and related retardant application, ash, and sediment.	2004	12.2 mi (19.7 km)	AGFD 2004; ASU 2002.
North Fork East Fork Black—Loach minnow.	Recreational pressures, nonnative fish species, recent fire and related retardant application, ash, and sediment.	2004	4.4 mi (7.1 km)	AGFD 2004; ASU 2002; Bagley et al. 1995, multiple surveys; Lopez 2000, p. 1.
Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek				
Aravaipa Creek—Spikedace and Loach minnow.	Fire, some recreational pressure, nonnative pressures, water diversion, contaminants.	2005	28.1 mi (45.3 km)	ADEQ 2006; AGFD 2004; ASU 2002; Rienthal 2006, pp. 2–3.
Deer Creek—Loach minnow.	Fire, some recreational pressure, low nonnative pressures.	2005	2.3 mi (3.6 km)	AGFD 2004; ASU 2002; Rienthal 2006, p. 2.
Turkey Creek—Loach minnow.	Fire, some recreational pressure, nonnative pressures.	2005	2.7 mi (4.3 km)	AGFD 2004; ASU 2002; Rienthal 2006, p. 2.
Gila River—Ashurst-Hayden Dam to San Pedro Spikedace	Water diversions, grazing, nonnative fish species.	1991	39.0 mi (62.8 km)	AGFD 2004; ASU 2002; Jakle 1992, p. 6.
San Pedro River (lower)—Spikedace.	Water diversions, grazing, nonnative fish species, mining.	1966 (directly connected to Aravaipa Creek, with records from 2005).	13.4 mi (21.5 km)	AGFD 2004; ASU 2002.
Complex 4—San Francisco and Blue Rivers				
Eagle Creek—Loach minnow.	Grazing, nonnative fish species, water diversions, mining.	1997	17.7 mi (28.5 km)	AGFD 2004; ASU 2002; Bagley and Marsh 1997, pp. 1–2; Knowles 1994, pp. 1–2, 5; Marsh et al. 2003, pp. 666–668.

TABLE 1.—LOCATIONS OF SPIKEDACE AND LOACH MINNOW STREAM SEGMENTS DESIGNATED AS CRITICAL HABITAT, THREATS TO THE SPECIES, LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION—Continued

Spikedace and/or loach minnow critical habitat areas	Threats	Last year occupancy confirmed	Critical habitat distance in mi (km)	Source
San Francisco River—Loach minnow.	Grazing, water diversions, nonnative fish species, road construction and maintenance, channelization.	2005	126.5 mi (203.5 km)	AGFD 2004; ASU 2002; Paroz et al. 2006, p. 67; Propst 2002, p. 13; Propst 2005, p. 10; Propst 2006, p. 2.
Tularosa River—Loach minnow.	Grazing, watershed disturbances.	2002	18.6 mi (30.0 km)	ASU 2002; Propst 2002, p. 9; Propst 2005, p. 6.
Frieborn Creek—Loach minnow.	Dispersed livestock grazing.	1998	1.1 mi (1.8 km)	ASU 2002.
Negrito Creek—Loach minnow.	Grazing, watershed disturbances.	1998	4.2 mi (6.8 km)	Miller 1998, pp. 4–5.
Whitewater Creek—Loach minnow.	Grazing, watershed disturbances.	1984 (directly connected to the San Francisco River, with records from 2005).	1.1 mi (1.8 km)	ASU 2002; Propst et al. 1988, p.15.
Blue River—Loach minnow.	Water diversions, nonnative fish species, livestock grazing, road construction.	2004	51.1 mi (82.2 km)	AGFD 2004; ASU 2002; Carter 2005; Propst 2002, p. 4.
Campbell Blue Creek—Loach minnow.	Grazing, nonnative fish species.	2004	8.1 mi (13.1 km)	AGFD 2004; ASU 2002; Carter 2005.
Little Blue Creek—Loach minnow.	Grazing, nonnative fish species.	1981 (directly connected to the Blue River, with records from 2004).	2.8 mi (4.5 km)	AGFD 2004; ASU 2002.
Dry Blue Creek—Loach minnow.	Grazing	2001	3.0 mi (4.8 km)	ASU 2002; Propst 2006, p. 2.
Pace Creek—Loach minnow.	Grazing, nonnative fish species.	1998	0.8 mi (1.2 km)	ASU 2002.
Complex 5—Upper Gila River				
East Fork Gila River—Spikedace and Loach minnow	Grazing, nonnative fish species, ash flows from wildfires.	2000, 1998	26.1 mi (42.0 km)	ASU 2002; Propst 2002, p. 27; Propst et al. 1998, p.14–15; Propst 2006, pp. 2.
Upper Gila River—Spikedace and Loach minnow.	Recreation, roads, grazing, nonnative fish species, water diversion.	2005	94.9 mi (152.7 km)	ASU 2002; Propst 2002, pp. 4, 31.
Middle Fork Gila River—Spikedace and Loach minnow.	Nonnative fish species, Grazing, ash flows from wildfires.	1995, 1998	7.7 mi (12.3 km), 11.9 mi (19.1 km).	ASU 2002; Paroz et al. 2006, p. 63; Propst 2002, p. 22; Propst, 2006, p. 2.
West Fork Gila River—Spikedace and Loach minnow.	Nonnative fish species, roads, ash flows from wildfires.	2005, 2002	7.7 mi (12.4 km)	ASU 2002; Paroz et al. 2006, p. 64; Propst 2002, p. 18; Propst 2006, p. 2.

Previous Federal Actions

We previously published a final critical habitat designation on April 25, 2000 (65 FR 24328). In *New Mexico Cattle Growers' Association and Coalition of Arizona/New Mexico Counties for Stable Economic Growth* v. *United States Fish and Wildlife Service*, CIV 02–0199 JB/LCS (D.N.M), the plaintiffs challenged the April 25, 2000, critical habitat designation for the spikedace and loach minnow because the economic analysis had been prepared using the same methods which the Tenth Circuit had held to be invalid. The Center for Biological Diversity joined the lawsuit as a Defendant-Intervenor. The Service agreed to a voluntary vacatur of the critical habitat designation, except for the Tonto Creek Complex. On August 31, 2004, the United States District Court for the District of New Mexico set aside the April 25, 2000, critical habitat designation in its entirety and remanded it to the Service for preparation of a new proposed and final designation. On December 20, 2005, we published a proposed critical habitat designation (70 FR 75546).

For more information on previous Federal actions concerning the spikedace and loach minnow, including listing documents published in 1985 and 1986 (50 FR 25380, June 18, 1985; 51 FR 39468, October 28, 1986; 51 FR 23769, July 1, 1986) as well as the first critical habitat designation in 1994 (59 FR 10898, March 8, 1994; 59 FR 10906, March 8, 1994), refer to the critical habitat designation published in the **Federal Register** on April 25, 2000 (65 FR 24328).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the spikedace and loach minnow on December 20, 2005 (70 FR 75546), and in two notices to reopen the comment period on June 6, 2006 (71 FR 32496) and October 4, 2006 (71 FR 58574). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. We requested information on the current status, distribution, and threats

to the spikedace and loach minnow, as well as information on the status of other aquatic species in the historical range of the spikedace and loach minnow. We requested this information in order to make a final critical habitat determination based on the best available scientific and commercial data. We also requested information on proposed exclusions of various areas from the final critical habitat designation. In addition, we held public hearings on June 13 and 20, 2006, in Silver City, NM, and Camp Verde, AZ, respectively, to solicit comments on the proposed rule. We published newspaper articles inviting public comment and announcing these public hearings in the *Arizona Republic*, *Arizona Daily Star*, *Camp Verde Bugle*, *Sierra Vista Herald*, *Tucson Citizen*, *Verde Independent*, and *White Mountain Independent* in Arizona, and the *Albuquerque Journal*, *Albuquerque Tribune*, and *Silver City Daily Press* in New Mexico.

During the first public comment period, which opened on December 20, 2005, and closed on February 21, 2006, we received 23 comments directly addressing the proposed critical habitat designation (e-mails, letters, and faxes). Of these, we received two comments from peer reviewers, three from Federal agencies, five from Tribes, one from a State agency, seven from organizations, and five from individuals. We also received two requests for public hearings. During the second comment period, which opened on June 6, 2006, and closed on July 6, 2006, we received 39 comments. Of these latter comments, 2 were from Federal agencies, 3 from State agencies, and 34 from organizations or individuals. During the third comment period, which opened on October 4, 2006, and closed on October 16, 2006, we received 11 comment letters. Of these comments, three were from Federal agencies and eight from organizations and individuals.

Of the written comments received during the first comment period, four supported, eight were opposed, and six included comments or information but did not express support for or opposition to the proposed critical habitat designation. Of the written comments received during the second comment period, nine supported, 23 were opposed, and seven included comments or information but did not express support for or opposition to the proposed listing and critical habitat designation. Written comments received during the third comment period were specific to the proposals to exclude portions of various streams due to receipt of management plans for those streams. Of these written comments, two supported exclusions in Eagle Creek and the upper Gila River, three opposed these exclusions, four proposed additional exclusions in other areas, and three included comments or information but did not express support for or opposition to the proposed exclusions.

We also received numerous comments on the content and soundness of the environmental assessment and economic analysis. For the environmental assessment, comments focused on the adequacy of completing an environmental assessment rather than an environmental impact statement, the inadequacy of the comment period and opportunities for public participation, the use of the 300-foot buffer for the lateral extent of the designation, the application of the destruction or adverse modification language, the adequacy of the discussion of impacts of the proposed action to water use and water rights, the range of alternatives covered, and the economic information provided in the environmental assessment.

Comments on the economic analysis included the suggestion that we failed to estimate benefits of the proposed designation; the adequacy and scope of the analysis; impacts to small business entities, ranching and farming communities, and water use and water rights; the Regulatory Flexibility Act; the Verde River and estimated costs and benefits of including it in the final designation; and Tribal lands and impacts to Tribes.

Responses to comments were grouped into three categories below. Peer review comments are listed first, followed by comments received from the States. Comments received from the public are listed last. Because staff from the New Mexico Department of Game and Fish (NMDGF) responded as peer reviewers, their comments are listed in the peer review section, while those of the AGFD are listed under State comments.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 13 knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. These individuals represented Federal agencies, State agencies, university researchers, or themselves as private individuals. We received responses from two of the peer reviewers, one as a private individual and the other in the capacity of an individual who works for the New Mexico Department of Game and Fish. Peer review comments focused on the reduction in the proposed critical habitat designation from previous designations, the area encompassed by critical habitat, and potential threats to the species, including the need to expand ''nonnative fish'' to include ''nonnative aquatic species.''

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the spikedace and loach minnow, and addressed them in the following summary.

Peer Reviewer Comments

(1) *Comment:* The reduction in stream miles of critical habitat proposed for designation from that previously designated for the spikedace and loach minnow provides no incentive for land and resource management agencies to launch projects that would restore conditions for the enhancement of spikedace and loach minnow. All of the major stream course and complexes, and many of the smaller tributaries, have potential to provide elements necessary for the recovery of these species and should be included in critical habitat.

Our response: The Service's process for designating critical habitat has evolved since prior designations of critical habitat for the spikedace and loach minnow. As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas for designation as critical habitat.

(2) *Comment:* In primary constituent element (PCE) 4, ''nonnative fish'' should be modified to include any and all nonnative aquatic species, including the current component of nonnative fishes and those that may become established in the future, as well as crayfishes, macroinvertebrates, parasites, and disease-causing pathogens.

Our response: We agree and we have changed ''nonnative aquatic fishes'' in the final rule to ''nonnative aquatic species.'' In addition, language has been added addressing additional nonnatives and their sources, as well as their potential effects on the native fish community.

(3) *Comment:* Designating critical habitat serves positive purposes. The prohibition against adverse modification is a powerful tool to protect unoccupied seasonal or migratory habitat and unoccupied habitat for population expansion as part of recovery. The most effective benefit from designating critical habitat is the impetus it provides to agencies and people to initiate conservation activities for the target

species and voluntarily curtail adverse impacts. No evidence is provided concluding that the (1) jeopardy standard is sufficient to protect habitat better than a critical habitat designation, (2) that critical habitat designation provides no education benefits better obtained otherwise, or (3) that conservation can be better achieved through implementing management plans rather than through implementing section 7 and other provisions of the Act.

Our response: Designation of critical habitat is one tool for managing listed species habitat. In addition to the designation of critical habitat, we have determined that other conservation mechanisms including the recovery planning process, section 6 funding to States, section 7 consultations, management plans, Safe Harbor agreements, and other on-the-ground strategies contribute to species conservation. We believe these other conservation measures provide greater incentives and often greater conservation. Please see ''Exclusions under Section 4(b)(2) of the Act'' for additional discussion.

(4) *Comment:* The Service should reclassify both species to endangered status, as a warranted but precluded finding was published in 1994. Both species have experienced significant reductions in range and abundance since that time, and their status in the wild continues to deteriorate. Reclassification would recognize the precarious status of the species and give higher priority for recovery actions.

Our response: We agree and in the 2006 Candidate Notice of Review (CNOR) (71 FR 53756; September 12, 2006) we resubmit our 12-month finding where we determine that reclassification of both the spikedace and loach minnow is warranted but precluded by other higher priority listing actions. The 2006 CNOR provides a detailed discussion of why these listing actions are precluded by other higher priority listing actions. We note that Federal and State agencies and other cooperators are continuing with recovery actions for the spikedace and loach minnow in a concerted effort to improve the status of these two fish.

(5) *Comment:* No information is presented on effects of wildfire on habitats (PCEs) each species occupies. Since 2000, wildfires have burned much of the West Fork Gila River watershed, fine sediment deposition has increased noticeably, and abundance of both spikedace and loach minnow have declined substantially at a permanent site on West Fork Gila River that is annually sampled.

Our response: We have added wildfire to the threats discussion within the unit descriptions below and within Table 1 as a threat to the West Fork Gila River.

(6) *Comment:* The lateral extent of the areas proposed for critical habitat is logical considering the dynamic nature of streams in the Gila River basin, and the scientific understanding of the role flood plains play in stream course functioning. Defining a measurable width that is wide enough to incorporate flood flows beyond the bankfull width is reasonable.

Our response: We agree with the commenter on this point.

State Comments

(7) *Comment:* We suggest a rewording of the statement regarding water quality in the PCE section for both spikedace and loach minnow to not require low levels of pollutants in the water. As written, these statements could be interpreted to mean that low levels of pollutants are needed.

Our response: We agree with this comment, and have revised the wording in the discussion of PCEs in the final rule to indicate that suitable water quality for spikedace and loach minnow will contain no or only minimal pollutant levels.

(8) *Comment:* The Arizona Department of Transportation requests that the Service provide estimated acreages of proposed critical habitat for each habitat complex. The total mileage figures are inconsistent and total miles should be provided for spikedace and loach minnow. The total mileages in Table 3 for New Mexico and Arizona are reversed.

Our response: Because fishes occupy stream habitat, we have determined it is more appropriate to quantify the delineation in terms of stream miles rather than total acres. All mileage figures throughout the rule and in the tables have been checked for consistency and adjusted where necessary.

General Comments Issue 1: Biological Concerns

(9) Some commentors have noted that we have misinterpreted or over-extrapolated information from various sources, in particular the proposed rule did not appear to include any studies that specifically define ranges for ''fine sediment'' or ''substrate embeddedness''; therefore, the phrase ''low or moderate amounts'' appears open to subjective interpretation.

Our response: For purposes of critical habitat designation, low to moderate amount of substrate embeddedness means embeddedness that does not preclude deposition of eggs among sand and gravel for spikedace, or on the undersurfaces of large rocks for loach minnow. Please see the discussion under ''Substrates'' for both spikedace and loach minnow for additional information.

(10) *Comment:* The statement within the proposed rule that ''Flooding, as part of a natural hydrograph, temporarily removes nonnative fish species, which are not adapted to flooding'' is an over-generalization. Minckley and Meffe (1987) concluded that nonnative fishes fared poorly in canyon reaches by noting that some nonnative species like green sunfish and smallmouth bass rebounded quickly from floods because they were stream-adapted. Flooding may also kill or displace native fishes. Some native fishes exhibit the potential to reproduce quickly after flooding, which could account for some of the effects reported by Minckley and Meffe (1987).

Our response: We have adjusted the text to better reflect Minckley and Meffe (1987).

(11) *Comment:* The most thriving populations of these fishes tend to be in flood blasted, warm, shallow, braided channel refugia and at places where vehicles splashed through streams, inside corrals (through which streams flowed), and in river channels within mine sites which are regularly bulldozed. The loach minnow is thriving on private land at a mine where heavy trucks cross the road several times a day, resulting in an area that is shallow and full of sediment.

Our response: We disagree with this conclusion. While spikedace and/or loach minnow are sometimes found in association with low water crossings, and while flooding is an important component of habitat maintenance for these species, we are not aware of any locations where they occur in streams flowing through corrals or within mine sites which are regularly bulldozed. We currently have survey records dating from the late 1800s to the present for these species, as well as numerous studies that detail the habitat requirements for the species, all of which indicate that they occur in habitat different than that described by the commenter.

(12) *Comment:* The Gila River is not critical habitat for the minnows because extreme flood waters may kill small fish. Small streams are better suited for small fish, because large fish will predate on the smaller fish.

Our response: Please refer to the discussion on ''Flooding'' below under the PCE discussion for spikedace. As noted in that discussion, Minckley and

Meffe (1987, p. 99–100) studied the differential responses of native and nonnative fishes in seven unregulated and three regulated streams or stream reaches that were sampled before and after major flooding. They noted that fish faunas of canyon-bound reaches of unregulated streams invariably shifted from a mixture of native and nonnative fish species to predominantly, and in some cases exclusively, native forms after large floods.

(13) *Comment:* One commenter notes that many of these minnows can be seen in the Gila River.

Our response: While spikedace and loach minnow do occur in the Gila River, it is important to note that the ''minnows'' seen in the Gila River may or may not be spikedace or loach minnow. There are approximately 235 species of fishes that are within the minnow family, Cyprinidae, in North America (Bond 1979, p. 170). Spikedace and loach minnow are members of this family. Other small-bodied, native minnows which are more commonly found within the Gila River include longfin dace (*Agosia chrysogaster*) and speckled dace (*Rhinichthys osculus*). These fish, even as adults, can be confused with spikedace and loach minnow. There are several other species which are technically minnows and may be confused with spikedace and loach minnow when young. These include native roundtail chub (*Gila robusta*) and nonnative common carp (*Cyrpinus carpio*), goldfish (*Carassius auratus*), and fathead minnow (*Pimephales promelas*) (Lee *et al.* 1980, pp. 140–367).

(14) *Comment:* Spikedace were last seen in the Verde River in 1999. They may already be extinct.

Our response: Because the last record for spikedace on the Verde River was from 1999, this area still meets the 10-year occupancy criteria used in developing the critical habitat. We are also aware of gaps in the survey record in which spikedace were not found for greater than 10 years, but then reappeared. Surveys do not allow for 100 percent detection of a species, particularly for species such as spikedace that are hard to detect.

General Comments Issue 2: Procedural and Legal Compliance

(15) *Comment:* Several commenters requested a 60-day extension of the comment period, or indicated that two public hearings and the comment periods provided were inadequate to provide comment on the proposed rule, draft economic analysis, and the draft environmental assessment.

Our response: We believe the three comment periods allowed for adequate opportunity for public comment. A total of 100 days was provided for document review and the public to submit comments.

(16) *Comment:* Reintroduction of the spikedace and loach minnow to the Verde River will result in killing and poisoning of the non-native fish, leaving the public with a non-fishable river. The general public will be banned from setting foot or paddling on the river area or using the Verde River for recreation.

Our response: The designation of critical habitat does not entail reintroduction efforts of spikedace or loach minnow. In addition, designation of critical habitat does not set up wildlife refuges or preserves, or require the exclusion of all other uses. Critical habitat was designated previously on the Verde River for spikedace and loach minnow from 2000 to 2004, during which time recreation and use of this area by the public continued.

(17) *Comment:* The Service appears inconsistent in their critical habitat designations in terms of the lateral extent of the critical habitat designation. There is no reference for best scientific evidence in the determination of 300 ft (91.4 m) as lateral extent. Prior rulings for razorback sucker, Colorado pikeminnow, humpback chub, and bonytail chub define the lateral extent of critical habitat as the 100-year floodplain where PCEs occur, with the caveat that potential areas of critical habitat should be evaluated on a case by case basis. The final ruling for woundfin and Virgin River chub use the 100-year floodplain.

Our response: Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the U.S. Army Corps of Engineers for the areas designated as critical habitat, possibly due to the remoteness of various stream reaches. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (i.e., the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' final notice concerning Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818–12899). Please see the section entitled ''Lateral Extent'' below for more information. In addition, in more recent rules we have used the 300 ft (91.4 m) width to define the lateral extent of critical habitat for the Rio Grande silvery minnow (February 19, 2003; 68 FR 8088), the Gila chub (November 2, 2005; 70 FR 66664), and the Arkansas River shiner (October 13, 2005; 70 FR 59808).

(18) *Comment:* A designation of 300 ft (91.4 m) may impact roads or facilities. Roads or facilities impacted by flooding may require periodic maintenance. Additionally, if a river shifts in response to flooding, critical habitat would have to shift and potentially affect the rebuilding of diversion structures. The proposed rule does not address what happens when a river channel moves.

Our response: Prior critical habitat designations for spikedace and loach minnow from 2000 to 2004 did not prevent maintenance or rebuilding of structures damaged by flooding nor will this final designation. Where critical habitat is designated, activities funded, authorized, or carried out in these areas by Federal action agencies that may affect the PCEs of the critical habitat, may require consultation pursuant to section 7 of the Act. The purpose of the consultation is not to stop activities from occurring, but to ensure that such activities do not result in jeopardy to listed species or adverse modification of critical habitat. When determining final critical habitat map boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack any PCEs for the spikedace and loach minnow. Any such structures and the land under them inadvertently left inside critical habitat boundaries of this final rule are excluded by text and are not designated as critical habitat. Specifically, lands located within the boundaries of the critical habitat designation, but that do not contain any of the PCEs essential to the conservation of the spikedace and loach minnow

include: Existing paved roads; bridges; parking lots; railroad tracks; railroad trestles; water diversion and irrigation canals outside natural stream channels; active sand and gravel pits; regularly cultivated agricultural land; and residential, commercial, and industrial developments.

Critical habitat includes the area of bankfull width plus 300 ft (91.4 m) on either side of the banks. Should the active channel meander or shift we anticipate that it would still be contained within the 300 foot (91.4 m) lateral extent of the designation (i.e. our current critical habitat boundary); thus we do not find that critical habitat will shift as a result.

(19) *Comment:* The 300 ft (91.4 m) lateral extent likely represents an expansion of critical habitat to areas that are not necessarily riparian habitat, particularly on small streams.

Our response: Although the spikedace and loach minnow cannot be found in the riparian areas when they are dry, these areas are periodically flooded and provide habitat during high-water periods. These areas also contribute to PCEs 1 and 2 and contain PCEs 3 and 5. As noted in response to 18 above, vegetated lateral zones are widely recognized as providing a variety of aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs, and help improve or maintain local water quality.

(20) *Comment:* The 300 ft (91.4 m) designation needs additional defining. It is unclear if it is to be measured up to the slope of the bank or horizontally on a map. In many reaches of the specific rivers and streams in the designation, the flowing channels are confined within narrow canyon bottoms, and a 300 ft (91.4 m) buffer in some cases extends several hundred feet vertically up the side of the canyon. In addition, bankfull width, while scientifically valid and useful, may be hard to determine in the field.

Our response: Critical habitat includes the area of bankfull width plus 300 ft (91.4 m) on either side of the banks, except where bordered by a canyon wall. Since a canyon wall is not defined as a PCE for the spikedace and loach minnow it would not be considered critical habitat. The 300 foot lateral extent is not for the purpose of creating a ''buffer zone.'' Rather, it defines the lateral extent of those areas we have determined contain or contribute to the features (PCEs 3 and 5) that are essential to the conservation of these species (e.g., water quality, food source, etc.).

(21) *Comment:* The Service is inconsistent in its treatment of, and fails to properly analyze the impacts of, groundwater wells and other potential detrimental activities that are located outside the 300 ft (91.4 m) lateral extent of critical habitat.

Our response: Activities funded, authorized, or carried out by Federal action agencies that may affect the PCEs of the critical habitat, may require consultation pursuant to section 7 of the Act. Thus, groundwater pumping activities may require consultation pursuant to section 7 of the Act if the action agency determines that the activity may affect the PCEs for the spikedace or loach minnow, regardless of whether the activity is occurring within or outside the critical habitat designation.

(22) *Comment:* The Service should designate the areas within the active floodplain that are necessary to support the PCEs of spikedace and loach minnow critical habitat for the recovery of the species, as demonstrated by the best available science. We suggest that the Service look at hydrogeomorphic and biological features to determine the width along each segment where the PCEs are likely to exist. Such information may include specific return intervals (5-, 10-, 50-year events), floodplain features (ordinary high water mark), or floodplain vegetation as indicators of important habitat, which can be mapped in the field along with bankfull flow width.

Our response: As noted in our response to comment 17 above, we do not have this type of information available to us and thus we selected the 300 ft (91.4 m) lateral extent as the best available science to map the areas that contain or contribute to the features that are essential to the conservation of these species.

(23) *Comment:* The best scientific information currently available recognizes that for most native fish species, conservation cannot be achieved without eliminating or greatly suppressing nonnative fishes (Clarkson et al. 2005). The common nonnative fish occupying the same or overlapping geographic areas with spikedace and loach minnow are known to compete with or prey on all life stages of native fish (Pacey and Marsh 1998). Thus, where nonnative fishes have high abundance, and where there is limited opportunity or ability for the Service to manage these nonnative species due to physical constraints of the river system or political/social constraints, these segments are unlikely to provide important habitat for any of the spikedace and loach minnow life stages regardless of the condition of other PCEs. Nonnatives are especially a problem for the San Francisco River, Gila River, and Eagle Creek.

Our response: Critical habitat designation is not the process through which we rule out habitat suitability due to threats, but the process through which we identify habitat that provides for one or more of the life history functions of the species. As defined in section 3(5)(A) of the Act, critical habitat means ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.'' During the designation process, the Service identifies threats to the best of our ability where they exist. Identification of a threat within an area does not mean that that area is no longer suitable, rather that special management or protections may be required. If an area contains sufficient PCEs to provide for one or more of the life history functions of spikedace or loach minnow, and if it was occupied at the time the species was listed and is currently occupied, it is reasonable to include it within a proposed critical habitat designation. The need to address a particular threat, such as nonnative fishes, in a portion of the critical habitat designation may or may not arise in the future. Further, describing both the areas which support PCEs and the threats to those areas assists resource managers in their conservation planning efforts for threatened and endangered species like spikedace and loach minnow.

(24) *Comment:* Absent clear scientific evidence that intermittent stream reaches are used by spikedace or loach minnow to move between occupied habitats, and are critical to their recovery, the fifth PCE should not be included as part of the final designation.

Our response: It was not our intent to imply that spikedace or loach minnow occupy intermittent reaches when water is not present. We included interconnected waters because spikedace and loach minnow have the ability to move between populated, wetted areas, at least during certain flow regimes or seasons. Because streams provide continuous habitat when connected, and because fish are mobile, it is reasonable to conclude that intermittent areas, when wetted, may be used during fish movement. In addition, some complexes include stream reaches that play a role in the overall health of

the aquatic ecosystem, and therefore, the integrity of upstream and downstream spikedace and loach minnow habitat. Again, because stream habitat is continuous, actions taking place in an intermittent portion of the channel can have effects in upstream and downstream areas. Inclusion of these intervening areas assures protection of adjacent, perennial reaches.

(25) *Comment:* There is no record or document that summarizes or describes in detail the PCE conditions that the Service used as a decision-making tool to select reaches.

Our response: As stated under the ''Critical Habitat'' subheading in the final rule, the areas included within the proposed critical habitat designation are based not only on PCE conditions, but also on whether or not an area was occupied at listing and may require special management considerations or protections. There is no single record or document that summarizes this information. Instead, the Service looked at various databases and survey records to determine occupancy, as well as habitat descriptions at various locations. We relied on information provided in survey reports and research documents to describe conditions at various locations. This information was then synthesized to develop the proposed critical habitat designation.

(26) *Comment:* As a final step before the issuance of the proposed rule, the Service should have ranked the suitable habitat to determine which areas possess the highest quality of PCEs. Based on this ranking, the Service would then have published the proposed rule designating the portions of suitable habitat needed to achieve recovery goals. The proposed rule would have also described areas of suitable habitat identified by the Service but not included in the proposed rule.

Our response: The regulations governing critical habitat designations do not require ranking of suitable habitat. With species such as spikedace and loach minnow, whose current distribution is severely reduced compared to historical distribution, determining the highest quality of PCEs is not a useful tool in developing a recommendation, and inclusion of only the highest ranking areas would not be sufficient for recovery of these species. The Service has developed a rule set that we have determined identifies those areas to be included as final critical habitat. We have coupled that rule set with the best scientific and commercial information available regarding species distribution, habitat parameters, and life history, and have included those areas within the designation.

(27) *Comment:* The preamble articulates the following important concept: ''Where a subset of PCEs are present (e.g., water temperature during spawning), only those PCEs present at designation will be protected.'' This concept should be reflected in the rule language itself. The proposal is not always clear as to what PCEs are present in each stretch of river. For example, with respect to the 39 mile stretch of the Gila River included in the proposal, the preamble states only that it contains ''one or more'' of four PCEs. This creates uncertainty about what PCEs are present in which segments, which could in turn cause difficulties in future section 7 consultations regarding possible adverse effects on critical habitat.

Our response: Within the discussion immediately following Table 1, PCEs are described for each complex. For example, for the 39 mile stretch of the Gila River addressed in this comment, the proposed rule states that ''Those portions of the Gila River proposed for designation contain one or more of the PCEs, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles).'' This information should be useful in future section 7 consultations.

(28) *Comment:* Page 75556 of the proposed rule states ''Where a subset of the PCEs are present (e.g., water temperature during spawning), only those PCEs present at the time of designation will be protected.'' Implementation of this misguided approach negates the conservation value of the critical habitat designation because lack of perennial water, appropriate stream habitat, or high abundance of predatory nonnative fish precludes the survival or recovery of spikedace or loach minnow. We believe the Service needs to fully consider the implication of this language in the Proposed Rule, and reevaluate the proposed reaches in light of the need to contain all PCEs at the time of designation, especially those reaches that contain high numbers of nonnative fish species.

Our response: Stream complexes as part of this final rule making were designated based on sufficient PCEs being present to support spikedace and loach minnow life processes. Some complexes contain all PCEs and support multiple life processes. Some segments contain only a portion of the PCEs necessary to support the spikedace and loach minnow's particular use of that habitat. Where a subset of the PCEs are present (such as water temperature during migration flows), it has been noted that only PCEs present at designation will be protected.

(29) *Comment:* With respect to the PCEs, an additional quantitative value that should be measured is the large wood present in a system.

Our response: We agree that large wood is an important factor to analyze in assessing riparian ecosystem health; however, we are not aware of any data at this time that illustrates what amount of large woody debris within a system would constitute ideal conditions for spikedace and loach minnow. Should such information be developed in the future, it would be another useful factor in evaluating river system health and habitat suitability for spikedace and loach minnow.

(30) *Comment:* Flow velocity values should be in feet per second, which is a more appropriate field estimate and ensures greater accuracy between readings and reader. These values can also be better correlated with historical and stream gauge data.

Our response: While it may be more useful to report flow velocity values in feet per second, it is our practice to use values and units of measurement as they were reported by the author of the research summarized.

(31) Microhabitat flows are highly related to habitat complexity. Though it is appropriate to define these flows, there should be more emphasis on habitat complexity and the functions needed to create it such as floodplain interaction, riparian condition, and large wood recruitment.

Our response: We believe the final rule accomplishes both of these objectives. We have chosen to consider overall riparian health, as well as floodplain interaction and stream health, by including riparian vegetation and floodplain areas within the critical habitat designation, as encompassed by the 300 foot lateral zone. In addition, we have attempted to define key components of occupied habitat, as defined in the PCEs. One of those components relates to flow velocities. We have incorporated the information we have relevant to spikedace and loach minnow within the rule.

(32) *Comment:* Because microhabitat is variable and transient, gradient values should be more generalized and at the geomorphic reach level.

Our response: We are required to use the best scientific and commercial information available. At this time, no assessment of gradient values at a geomorphic reach level has been completed for occupied or suitable spikedace and loach minnow habitat.

(33) *Comment:* In evaluating riparian habitat, there should be two or more native, riparian-obligate woody species and two or more riparian-obligate herbaceous species present and vigorous (Winward 2000). In terms of species diversity, all four age classes of native, riparian-obligate woody species must be present and vigorous. These classes are seedling/sprout, young/sapling, mature/decadent, and dead (Winward 2000).

Our response: We agree that a diversity of composition leads to healthier riparian habitat; however, we do not have sufficient information of this type tied to occupied spikedace and loach minnow critical habitat to use in developing an individual PCE. The individual PCEs represent the actual physical and biological parameters of habitat used by the fish.

(34) *Comment:* Conflicting comments were received on the temperature ranges listed within the PCEs for spikedace and loach minnow. In summary, we received comments that the PCE temperature range is broader (35 to 85 °F) than the literature indicates (48.2 and 71.6 °F), with the potential net effect being an extension of stream reaches both upstream and downstream from areas actually likely to support the species. A second commenter noted that the Bonar et al. (2005) study found 100 percent survival of loach minnow at 28 °C (82 °F) and 100 percent survival of spikedace at 30 °C (86 °F) corresponded quite well with upper limits in the proposed rule PCEs. A third commenter noted that appropriate values should be a maximum seven day average.

Our response: We have reviewed the study completed by the University of Arizona (Bonar et al. 2005) and incorporated its findings into discussions of temperature tolerances within the final rule. The PCEs serve as guidelines to resource managers in evaluating the suitability of areas for spikedace and loach minnow. Temperature ranges provided are based on the studies completed at various occupied locations, and adequately represent the habitat most suitable for spikedace and loach minnow. In most instances, resource managers do not have the ability to develop seven day averages. With respect to broadening the range of the species by incorporating too wide a range of suitable temperatures, we note that we are using the Act's standard of best available scientific information, and should temperatures at these sites be found at the high point of the range provided in this PCE, it would already be within an area occupied by the species, so the species' range would not be broadened.

(35) *Comment:* Water depths of 1 to 30 inches are specified as a PCE for adult, juvenile, and larval loach minnow. No data or references are cited to support any specific range of depths. Additionally, pools aren't appropriate for spikedace and loach minnow, but are suitable for predatory non-natives that are significantly detrimental.

Our response: Water depths are known for all occupied spikedace and loach minnow sites, as discussed below. Therefore, the range described in the PCEs reflects the range considered to provide suitable habitat for these fishes by biologists familiar with the species.

Spikedace and loach minnow are less likely to use pool habitat than other types of habitat, however, Sublette et al. (1990, p. 138) and Propst et al. (1986, p. 40) note that spikedace juveniles and larvae are occasionally found in quiet pools or backwaters lacking streamflow (Sublette et al. 1990, p. 138). Barber et al. (1970, pp. 11–12) also noted that female spikedace occupy deeper pools and eddies during portions of the breeding season. In addition, Schreiber (1978, pp. 40–41) found that the availability of pool and run habitats affects availability of prey species consumed by loach minnow.

(36) *Comment:* Virtually any perennial stream above 3,000 feet elevation in Arizona displays the characteristics cited by the Service in its PCEs and thus they are not particularly helpful in identifying the areas necessary for the conservation of the spikedace and loach minnow.

Our response: The PCEs are based on the range of criteria developed following review of research conducted at occupied spikedace and loach minnow sites. Use of the PCEs alone may result in the inclusion of most streams above 3,000 feet in elevation. However, coupled with occupancy information and the geographic range of the species, we are able to identify final critical habitat for the spikedace and loach minnow.

(37) *Comment:* Flood magnitude and frequency deserve careful consideration and incorporation as part of a ''flood frequency and magnitude'' PCE. The Service has failed to include important hydrologic features in the analysis of current habitat for spikedace and loach minnow.

Our response: We agree that flooding is a key process in maintaining suitable habitat components for spikedace and loach minnow, and have addressed this in PCE 2. A PCE focused strictly on flooding would be difficult to define, as there is considerable variability in the flood magnitude and frequency of different systems. More importantly, flooding itself would be inappropriate as a PCE as flooding is a process that maintains the necessary components of occupied habitat, whereas PCEs are the features essential to the conservation of the species. We determine those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection, rather than looking at the processes that aid in developing those features 50 CFR 424.12(b).

(38) *Comment:* Although the five PCEs appear to be generally correct, they are describing fine-grained characteristics applicable to a square-meter by square-meter assessment. Only two PCEs are coarse-grained; (1) reaches devoid of nonnative fish, and (2) stream reaches that flow sporadically and provide connective corridors between occupied and seasonally occupied reaches. The other PCEs are focused on the biological requirements for individual fish, rather than the population or the species to which it belongs.

Our response: We disagree with the commenter on this point. It is true that the PCEs focus on the biological needs of the individual fish, but collectively, the biological needs of the fish represent the biological needs of the species. As previously noted, critical habitat, as stated in the Act, is defined as ''* * * specific areas * * * on which are found the physical or biological features (I) essential to the conservation of the species * * *.'' The Service has determined that the PCEs, as defined by studies in occupied areas, define the features essential to the conservation of the species.

(39) *Comment:* We request exclusion of all areas within roadway right-of-ways or easement limits because section 7 is required in these areas for projects affecting threatened and endangered species. Designation within right-of-ways would have no additional benefit.

Our response: Developed lands, including roadway right-of-ways, do not contain the PCEs essential to the conservation of the spikedace and loach minnow. Federal action agencies are only required to consult on activities they authorize, fund, or carry out that may affect the physical or biological features determined in this rule to be essential to conservation of these fish. See also response to comment 18 above.

(40) *Comment:* The Bureau of Reclamation lands are on the lower San Pedro River and not the Gila River. This mistake is also continued in the regulation promulgation section.

Our response: According to GIS landownership layers from the Arizona

Land Resource Information System of the Arizona State Land Department, the Bureau of Reclamation lands referenced by the commenter are on the Gila River beginning at Township 4 South, Range 13 West, section 3.

(41) *Comment:* The critical habitat designation allows for exclusions when special management considerations are not required based on management plans. This policy should allow for land management agencies to adopt species management plans.

Our response: In this final rule, our exclusion of areas covered by management plans was made pursuant to section 4(b)(2) of the Act, where we determined that the benefits of exclusion outweighed the benefits of inclusion. These determinations were not hindered by landownership.

(42) Ten years is insufficient to determine presence or absence of spikedace and loach minnow given the elusiveness of the species, the difficulty of obtaining a thorough sampling of remote streams with difficult access, and the low efficiency of sampling techniques. There is greater biological support to use a period of 20 to 40 years as the standard for determining ''occupancy.''

Our response: We believe a period of 10 years is reasonable to determine occupancy based on the fact that both species are difficult to detect in surveys, surveys have been infrequent or inconsistent because many of the areas where they occur are remote, and we have areas where these species were not detected for long periods of time (44 years) and then detected again. Specifically, the methodology used considers a stream segment occupied if the spikedace or loach minnow has been detected in the last 10 years or if the stream segment is connected to a stream segment with spikedace or loach minnow records within the last 10 years. For example, we consider the lower San Pedro River and the Gila River ''occupied'' due to their connections with Aravaipa Creek, an area where we have documented records of these fish from within the last 10 years. We have determined our methodology is reasonable to determine areas that meet the definition of critical habitat.

(43) *Comment:* With respect to occupancy, we do question the assumption that all stream segments with a ''direct connection'' to occupied areas are themselves occupied. There is little scientific basis for this assumption.

Our response: The language within the rule states ''We consider an area to be occupied by the spikedace or loach minnow if we have records to support occupancy within the last 10 years, or where the stream segment is directly connected to a segment with occupancy records from within the last 10 years.'' While we do not have occupancy records for these connected areas within the last 10 years, we believe it is reasonable to consider these connected areas to be occupied for the purposes of critical habitat as they are part of a larger contiguous complex with documented occupancy within the last 10 years. We consider it reasonable because of the elusiveness of the species, the difficulty of obtaining a thorough sampling of remote streams with difficult access, and the low efficiency of sampling techniques.

(44) *Comment:* The North Fork of the White River and the mainstem White River downstream of the confluence of the North and East Forks should be included in the designation. Records of loach minnow within the last 10 years exist for both streams.

Our response: These stream segments occur on Tribal lands and we have no information available to us to conclude that these areas meet the definition of critical habitat for the loach minnow. Please see ''Relationship of Critical Habitat to Tribal Lands'' below for additional discussion of Tribal management plan and protections that exist for these fish on those lands.

(45) *Comment:* The Service should use wording similar to that used in the 2000 critical habitat designation which states ''We have determined the primary constituent elements essential to the conservation of spikedace include, but are not limited to * * *.'' This provides for inclusion of new scientific information without the need for cumbersome and expensive reproposal of critical habitat.

Our response: We have determined the revised language provides more specifics and certainty about the PCEs, and any revisions to a regulation as a result of new information may only be made through a new rulemaking process.

(46) *Comment:* The proposed rule incorrectly paraphrases the regulatory definition of destruction or adverse modification of critical habitat. The paraphrased definition limits analysis of destruction or adverse modification to ''those physical or biological features that were the basis for determining the habitat to be critical'', a limitation not found in the regulatory definition. Instead, the regulatory definition directly addresses effects to the critical habitat rather than a surrogate. The paraphrased definition also omits the regulatory definition's inclusion of diminution of the values of ''both the survival and recovery of a listed species.''

Our response: The Service no longer relies on the regulatory definition of adverse modification of critical habitat. Instead the Service relies on the statutory provision of the Act to complete the analysis on critical habitat. Please see ''General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process'' below for additional information.

(47) *Comment:* There is no ''sufficiently unregulated hydrograph'' on the Gila River below its confluence with the San Pedro River. We do not believe the PCEs identified by the Service in the proposal are present in this stretch. This section of the Gila River (below the San Pedro) should be removed from the critical habitat designation.

Our response: While it may not contain all of the PCEs, we have determined it currently supports one or more of them (i.e., low gradient, appropriate water temperatures, and pool, riffle, run, and backwater components), and because of this and its proximity to occupied areas, it remains in the designation.

(48) *Comment:* We dispute the claim that spikedace occupancy of the Verde River was confirmed as recently as 1999. No spikedace have been confirmed from the Verde River since at least 1995. Thus, the Verde River does not meet the Service's own criteria for critical habitat because there are no records within the last 10 years.

Our response: The 1999 record is considered by the Service as a confirmed record. The spikedace in question was captured and identified by a qualified AGFD fisheries biologist (AGFD 2004).

(49) *Comment:* The large amount of privately owned land that is included in the proposal is too great of a restriction of use.

Our response: Critical habitat does not affect private actions on private lands. A designation of critical habitat requires that Federal action agencies consult with the Service on activities that they fund, authorize, or carry out that may affect critical habitat. We note that the designated 105 mi (170 km) for spikedace and the 126 mi (203 km) for loach minnow of private lands is part of, not in addition to, the total 522 mi (840 km).

(50) *Comment:* The adverse impacts of critical habitat on non-Federal rights and interests were exacerbated under Gifford Pinchot, which increases the impact of a critical habitat designation on water and land uses by creating a heightened standard for the

''destruction or adverse modification'' of critical habitat. More activities that require a Federal permit or other approval will violate section 7(a)(2) of the Act and will require formal consultation. When combined with the Service's use of section 7(a)(2) to ''Federalize'' and control non-Federal projects, Gifford Pinchot will dramatically increase the economic impacts caused by the critical habitat designation.

Our response: We recognize that under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to the recovery of a species. This relates to the court's ruling that the two standards (e.g. jeopardy and adverse modification) are distinct and that adverse modification evaluations require consideration of impacts on the recovery of species. As such, where appropriate, we analyze or consider the effects of the Gifford Pinchot decision in this rule, the economic analysis, and the environmental assessment. For example, in light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling. Additionally, in this critical habitat designation, we are designating areas that are occupied, as defined elsewhere in this rule, by one or both species; thus, there is already a requirement for consultation with the Service over any water and land use actions that may affect these species. The purpose of the consultation process is not to ''Federalize'' private projects, but to ensure that federally-sponsored activities do not jeopardize listed species or adversely modify or destroy designated critical habitat.

(51) *Comment:* The Gila Settlement and associated agreements allow the State of New Mexico to divert for consumptive use 14,000 acre feet of water originally set aside under the Central Arizona Project authorizing legislation. The diversion of this additional 14,000 acre-feet of water almost doubles current adjudicated withdrawal from the Gila and San Francisco rivers and could significantly impair river function and riparian conditions and threaten native species such as the loach minnow and spikedace.

Our response: The Service is an active partner on the Gila and San Francisco Rivers Technical Subcommittee, which is evaluating the environmental impacts of these water diversions from the upper Gila and San Francisco rivers. Considerations for spikedace and loach minnow are prominent in those discussions. We have identified water diversions as a threat for spikedace and loach minnow within this complex.

(52) *Comment:* The Upper Eagle Creek Watershed Association has developed a watershed plan in collaboration with the Forest Service and the Arizona Department of Environmental Quality. This plan has addressed the loach minnow and spikedace as endangered fish that may occupy areas covered by the plan. The plan guides the community, permittees, and agencies in developing the Upper Eagle Creek Watershed into its greatest potential for all species. On the basis of this plan and the partnership with the people on the land with all agencies, it would be best to exclude Eagle Creek from the critical habitat designation.

Our response: We appreciate the efforts the Upper Eagle Creek Watershed Association has taken to work collaboratively with the Forest Service, cooperators, and the Service. Unfortunately, the Upper Eagle Creek Watershed Management Plan was received on the last day of the third comment period, and was still in draft form. For these reasons, we are not able to consider the plan as a basis for excluding Eagle Creek at this time. We understand it is the intention of the Association to finalize and implement the plan, and we look forward to working cooperatively with the Association in these efforts. Once the plan has been finalized and implemented, we have the option of excluding those portions of Eagle Creek covered by the plan. As discussed in ''Exclusions under Section 4(b)(2) of the Act'' below, we have excluded other portions of Eagle Creek from critical habitat based on other information available to us.

(53) *Comment:* The Blue River should be excluded from critical habitat in order to ensure that the ongoing coordination between the Service and the Blue River Native Fisheries, Research and Education Center is unencumbered.

Our response: At this time we have no documentation, such as a management plan, to evaluate in terms of a potential exclusion of the Blue River from the critical habitat designation. Additionally, the majority of property along the Blue River is under Forest Service management and management activities for the conservation of the spikedace and loach minnow would require coordination with the Forest Service. We fully intend to continue our ongoing coordination with the Blue River Native Fisheries, Research and Education Center. The designation of critical habitat is a separate process which will not hinder these efforts and we commend the Center for their interest in conserving the Blue River.

(54) *Comment:* The Service should remove the Middle Verde River from the final rule and retain the Upper Verde River segment as critical habitat based on: (1) The current biological conditions within each river segment to conserve the spikedace; (2) the existing physical barrier (i.e., Allen Ditch Diversion) between the Upper and Middle Verde River, which likely precludes movement and connectivity between reaches; (3) the prevailing technical feasibility and fisheries management emphasis of each river segment; and (4) the high potential economic burden to groundwater and surface water users in the Middle Verde River (i.e., Verde Valley) compared to the Upper Verde River.

Our response: Pursuant to section 4(b)(2) of the Act we have excluded the lower portion of the Verde River based on economic costs. See exclusion discussion below.

(55) *Comment:* One of the requirements of critical habitat is that these areas should be ''protected from disturbance or are representative of the historic geographical and ecological distributions of a species (50 CFR § 424.12(b)(1)–(5); 70 FR 75551; December 20, 2005).'' In other words, if suitable locations are available elsewhere, it does not make sense to designate critical habitat along stream reaches that are already impacted by land or water use activities or will soon be impacted by those activities. The Service applied this criterion in some places (e.g., the upper San Pedro River, p. 75546) and portions of the Black River complex (p. 75560) that were found to have too high an abundance of nonnative fish to be important habitat), but did not apply it in others (i.e., middle Verde River, Gila River, and lower San Pedro River). The Service should apply this criteria and standards consistently to evaluate each PCE among all potentially suitable habitats in a transparent process.

Our response: We do not agree that critical habitat should not be designated in areas that have experienced some level of impact to the habitat. As previously stated, designation of critical habitat focuses on the areas that contain the PCEs and provide for the conservation of the species, rather than the threats that may be present in an area. Thus, our methodology focuses on

occupied areas that contain the PCEs and not on the type or level of threat that occur in these areas. In addition, we note that we have limited suitable habitat remaining for these species such that additional suitable locations are not available elsewhere. See also our response to comment 58 below.

(56) *Comment:* Bear Creek should be designated as loach minnow critical habitat from its junction with the Gila River upstream to the junction with its tributaries Cherry Creek and Little Cherry Creek.

Our response: As noted in the notice to reopen the comment period published on June 6, 2006 (71 FR 32498, p. 32496), we did not propose Bear Creek because of the timeframe for completion of the final rule and associated documents. Information on occupancy of Bear Creek was received late in the process. Should critical habitat be revised in the future, Bear Creek would be considered for inclusion.

(57) *Comment:* Due to seasonal lack of water flows, Eagle Creek is unsuitable habitat for designation below the Gila and Salt River base line to the confluence with Willow Creek. Additionally, from Willow Creek to the Phelps Dodge diversion dam, flows are augmented to provide fresh water for mining operations and for potable use at the Morenci and Clifton townsites. This portion of Eagle Creek does not qualify for designation because: (1) These augmented flows do not provide a natural, unregulated hydrograph that allow for adequate river functions; (2) flow velocities are frequently higher than those required for these native fish; (3) pool, riffle, run, and backwater components are not present; and (4) non-native fish dominate this reach to an extent detrimental to natives and prevents the persistence or even occupancy of loach minnow or spikedace.

Our response: We do not agree with this comment. While this portion of Eagle Creek has been modified by both addition of flows and by the diversion structure, suitable habitat still exists. As stated previously, we consider those areas that meet our definition of occupancy and support one or more of the PCEs as areas the meet the definition of critical habitat. Eagle Creek met these criteria. As discussed below, we have excluded portions of Eagle Creek pursuant to section 4(b)(2) of the Act.

(58) *Comment:* Areas without threats such as the San Francisco and the middle reach of the mainstem Gila River do not require special management considerations or protection and thus can not be designated as critical habitat under the Act. The critical habitat designation will not protect the loach minnow from the threat of nonnatives and therefore special management is not required.

Our response: The Act does not require that critical habitat alleviate threats to the species. We have determined that various threats are present in all the rivers we proposed as critical habitat, as identified in Table 1. As required by the Act and the definition of critical habitat, we provide a discussion of known threats for each area to indicate that the biological and physical features essential to the conservation for these fish may require special management considerations or protection.

(59) *Comment:* Habitat requirements for both of the species are different and the Service should recognize this and not combine them.

Our response: We agree that there are differences in the habitat requirements of both species and we have distinguished this in our PCEs for each of the fish. We note that it is not unusual for streams to support habitat types for both the spikedace and loach minnow, often within the same reach, and some streams are occupied by both species (e.g., the Gila River and Aravaipa Creek).

(60) *Comment:* The proposed rule states that ''individual streams are not isolated, but are connected with others to form areas or complexes.'' This statement does not hold true for Complex 4. Eagle Creek is currently isolated from the San Francisco and Blue River complexes by a diversion dam. The Blue River will become inaccessible to upstream migration from the rest of the complex if a proposed fish barrier is constructed on the Blue River.

Our response: We have clarified the language in this final rule to indicate that collections of streams in proximity to each other were grouped together to form a category called ''complexes.'' Streams need not be hydrologically connected in order to be grouped together.

(61) *Comment:* No spikedace have been observed in Eagle Creek for 17 years, thus the segment does not meet the criteria for occupancy.

Our response: We agree, as the last record for spikedace in Eagle Creek was in 1989. Thus, critical habitat for spikedace in Eagle Creek has been removed from the final rule. However, Eagle Creek is considered critical habitat for the loach minnow. As discussed in the exclusion section below, portions of Eagle Creek have been excluded from the final rule.

(62) *Comment:* For spikedace, the Verde River from Tapco Diversion Dam down to Fossil Creek should be excluded. Although spikedace were found in 1999 in areas upstream, they have not been found downstream of the Sycamore Creek confluence in over 20 years. Although this area is connected to the occupied areas upstream, the Tapco Dam and numerous nonnative fishes occupy this reach and may serve to disconnect it from the upstream areas.

Our response: We believe the Verde River meets the definition of critical habitat for spikedace as we consider this area occupied based on occupancy records from 1999. Additionally, the Verde contains one or more of the PCEs including appropriate flow velocities, gradients, temperatures, habitat components (pool, riffle, run and backwater), and an abundant aquatic insect food base, and it requires special management or protection. However, pursuant to section 4(b)(2) of the Act, we have excluded the lower portion of the Verde River (see ''Exclusions under Section 4(b)(2) of the Act'' below).

(63) *Comment:* Regarding definition of adverse modification, the Service's definition erroneously eliminates congressional intent that critical habitat designations provide protection not just to survival of a species but to its recovery as well. It was the opinion of the court that ''the purpose of establishing 'critical habitat' is for government to carve out territory that is not only necessary for the species' survival but also important for the species' recovery.'' (*Sierra Club* v. *USFWS*, 245 F.3d 434 (5th Cir. 2001). The proposed rule for spikedace and loach minnow rejects that approach and relies on Service policy limiting critical habitat to only those areas occupied by the species.

Our response: The Act states, at section 3(5)(c), that except in particular circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Thus, it is not the intent of the Act that we designate critical habitat in all areas that have the potential to become suitable habitat or in all areas of historic habitat. We have determined that our methodology for determining those areas containing features essential to the conservation of the spikedace and loach minnow complies with the intent of the Act and does not include all areas which can be occupied. Our methodology resulted in areas being proposed as critical habitat that are within the geographical range occupied by the spikedace and loach minnow and

that contain the biological or physical features essential to their conservation and that may require special management.

(64) *Comment:* The approach proposed by the Service for determining whether to exclude Tribal lands from the final rule places undue weight on the argument that inclusion of Tribal lands will compromise government-to-government relations, to the potential detriment of species conservation goals. Additionally, under relevant Federal court precedent in Arizona, the Service is not permitted to rely upon assurances by the tribes that habitat will be ''adequately managed'' through the implementation of Tribal management plans as a basis for exclusion.

Our response: We disagree. See below for our analyses of the exclusion of Tribal lands pursuant to section 4(b)(2) of the Act.

(65) *Comment:* Ten days is not enough time to review all of these new documents. There should be a delay in designating critical habitat until the information can be properly reviewed.

Our response: We agree that the last comment period was shorter than we would have preferred. However, we have an obligation to submit for publication a final rule on December 20, 2005, and thus we were not able to accommodate a longer comment period. In addition, we believe the three comment periods allowed for adequate opportunity for public comment. A total of 100 days was provided for document review and the public to submit comments.

(66) *Comment:* The Phelps Dodge plans should undergo peer review and revision before being considered as sufficient conservation management.

Our response: Although formal peer review of management plans is not conducted or required, the documents are available for public review and comment during the open comment period.

(67) *Comment:* Phelps Dodge's Management Plan does not assure the maintenance of the PCEs for the spikedace and loach minnow.

Our response: We have determined the formation of this working relationship will promote the conservation of the loach minnow and spikedace and their PCEs on Phelps Dodge's property. See exclusion section below for a more detailed discussion of their management plans and analysis of this exclusion.

(68) *Comment:* The proposed rule is an inappropriate venue for changing the regulatory definition of section 7 consultation ''baseline.'' Section 7 regulations (51 FR 19958) define environmental baseline to include the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. The proposed rule would expand that definition to include ''ongoing Federal actions at the time of designation'' regardless of whether they have already undergone formal or early section 7 consultation.

Our response: The language referenced above has been removed from this final rule.

General Comments Issue 3: National Environmental Policy Act Compliance

(69) *Comment:* We believe the analysis in the draft environmental assessment to be simplistic and conclusory (See *Middle Rio Grande Conservancy Dist.* v. *Norton*). The impacts on the environment will be significant and controversial. The critical habitat designation as proposed is likely to result in adverse impacts on riparian areas, not only within the critical habitat itself, but also in the areas located upstream and downstream. The impacts on water use and management are significant and controversial.

Our response: We determined through the EA that the overall environmental effects of this action are insignificant. An EIS is required only if we find that the proposed action is expected to have a significant impact on the human environment. The completed studies, evaluations, and public outreach conducted by the Service have not identified impacts resulting from the proposed designation of critical habitat that are clearly *significant.* The Service has afforded substantial public input and involvement, with two public hearings and open houses. Each of these events had a small participation level by the public (less than 10 in Arizona, less than 20 in New Mexico, and less than 30 written comments on the draft environmental assessment). Based on our analysis and comments received from the public, we prepared a final EA and made a Finding of No Significant Impact (FONSI), negating the need for preparation of an EIS. We have determined our EA is consistent with the spirit and intent of NEPA. The final EA, FONSI, and final economic analysis provide our rationale for determining that critical habitat designation would not have a significant effect on the human environment. Those documents are available for public review (see **ADDRESSES** section).

(70) *Comment:* The draft EA fails to consider the impacts of critical habitat on the Arizona Water Settlements Act of 2004, which authorizes the exchange of Central Arizona Project (CAP) water diverted from the Colorado River into New Mexico from the Gila River. The project is reasonably foreseeable because New Mexico recently negotiated and executed an exchange agreement. The draft EA (p. 45) acknowledges the project but fails to discuss the impacts.

Our response: Page 49 of the EA states that the San Carlos Apache Tribe is concerned that the designation of critical habitat for the spikedace and loach minnow would further complicate the procedure for getting the CAP project approved. The Bureau of Reclamation states that this project would be reevaluated before an exchange could occur and a new consultation is likely.

(71) *Comment:* The Service failed to consider a reasonable range of alternatives to the proposed action in its EA.

Our response: We disagree. The draft EA considered a no-action alternative and several action alternatives and analyzed the adverse and beneficial environmental impacts of each.

(72) *Comment:* One alternative that seems worthy of consideration is the designation of known occupied habitat, rather than the designation of an entire stream based upon limited sightings in a limited area (e.g., Eagle Creek) or consideration of designating only Federal lands. The Service's failure to ''rigorously explore'' and evaluate reasonable alternatives is per se arbitrary and capricious.

Our response: We disagree. The alternatives considered are consistent with the purpose and need of the action of designating critical habitat. In compliance with the Act, we must propose for designation those areas that we have determined are essential, as well as those areas containing features essential, to the conservation of the spikedace and loach minnow. Only considering Federal lands for designation would not, in this case, comply with the intent of the Act. As discussed elsewhere in this rule, the areas proposed for designation were based on our definition of occupancy. See also response to comment 71 above.

(73) *Comments:* In the NEPA analysis, it should be recognized that there are positive aspects that have been observed from human culture and interaction. That analysis is required by law.

Our response: The purpose of a NEPA analysis is to determine the potential impacts of a proposed set of alternative actions on the human environment. It is not the purpose of NEPA to evaluate the positive aspects of humans and their environment.

General Comments Issue 4: Economic Analysis

General Methodology

(74) *Comment:* Two commenters recommend that the Economic Analysis discuss impact estimates for the Verde River unit as two separate subunits: An Upper Verde reach from Sullivan Dam to the Allen Diversion and a Lower Verde reach from the Allen Diversion to Fossil Creek.

Our response: The Final Economic Analysis (FEA) incorporates new information received, and separates costs associated with the Upper Verde and Lower Verde River segments where possible. This distinction is made most apparent in sections 7 and 8, and Appendix B of the FEA.

(75) *Comment:* One commenter states that the economic analysis fails to quantify the benefits associated with critical habitat designation. The commenter further states that although the Verde Valley Complex is singled out as the reach where the largest impacts will occur, there is no basis for this conclusion without exploring the ''net impacts'' through incorporation of benefit estimates and comparisons to baseline.

Our response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Service believes that society places a value on conserving any and all threatened and endangered species and the habitats upon which they depend. In our 4(b)(2) analysis below, we discuss the economic benefits of excluding portions of the Verde River and the conservation benefits related to the inclusion of this stream segment. Although, in this case, we are not able to quantify the monetary value of critical habitat benefits in the Verde Valley Complex, we did consider the benefits that may be derived from a critical habitat designation when considering an exclusion pursuant to section 4(b)(2).

The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (e.g., lost economic opportunity associated with restrictions on land use). Where data are available, the economic analysis does attempt to measure the net economic impact. For example, if the fencing of spikedace and loach minnow habitat to restrict riparian access for cattle is expected to result in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would attempt to net out the positive, offsetting economic impacts associated with their visits (e.g., impacts that would be associated with an increase in tourism spending). However, no data were found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

(76) *Comment:* One commenter states that many of the economic impacts attributed to spikedace and loach minnow critical habitat in the Verde Valley could be attributed to razorback sucker critical habitat.

Our response: To the extent possible, the FEA distinguishes costs related specifically to spikedace and loach minnow conservation where multiple species are the subject of a single conservation effort or section 7 consultation. In the case that another species clearly drives a project modification or conservation effort, the associated costs are appropriately not attributed to the spikedace and loach minnow. In Section 6, the FEA includes language that clarifies that the Verde River is designated as critical habitat for the razorback sucker.

Recreational Activities

(77) *Comment:* One commenter expressed concern that the designation of critical habitat will cause a loss of recreational activities on units such as the Verde River.

Our response: Potential changes to recreational activities are discussed in Section 6 of the FEA. Potential impacts on recreational fishing losses are specifically discussed and estimated in Section 6.4.2 of the FEA. Potential costs associated with lost recreational fishing activity on the two stream segments where non-native fish stocking currently occurs are estimated to be $0 to $8.6 million, using a discount rate of seven percent. As noted in Section 6.1.2, the future impact of proposed critical habitat on the stocking regimes in affected reaches is unknown, as is the reduction in fishing activity that would occur if stocking is curtailed. Further, it is unknown whether non-native trout may be replaced with stocked native fish (e.g. Gila trout). Thus, this analysis estimates the value of angler days at risk if sportfish stocking were discontinued on these reaches as part of the high end estimates.

(78) *Comment:* One commenter states concerns that the Economic Analysis does not take into consideration the past effects of fishing closures on the Blue River and Eagle Creek on local businesses. The comment states that one store in Greenlee County closed as a result of reduced fishing activity.

Our response: Section 6.1.1 of the FEA states that ''the AZGFD ceased stocking of sportfish in Eagle Creek and the Blue River in Apache-Sitgreaves National Forest due to native fish considerations in the late 1990s and began stocking endangered Gila trout in these reaches instead. Spikedace and loach minnow were among numerous species considered when these stocking cessations were put in place. Although several citizens at a public hearing held in Thatcher, Arizona, in 1999 voiced disappointment that the sites are no longer stocked, these changes in stocking have not affected the overall number of fish stocked in Arizona. However, there may have been consumer surplus losses associated with these closures because anglers may now take trips to less preferred sites. It should be noted that any past impacts would have occurred prior to this critical habitat rule taking effect.'' Section 6 and Appendix B of the FEA now highlight that the curtailment of stocking in these reaches has caused some economic impacts on local businesses.

Water Use and Grazing Issues

(79) *Comment:* One commenter states that exclusion of livestock from riparian areas using fencing has actually had an adverse effect on the spikedace and loach minnow.

Our response: The Economic Analysis recognizes that some controversy surrounds the issue of the impacts of livestock on native fish species. Section 4.1 of the FEA now states that ''in public comments, private ranchers have suggested that current management has been successful at mitigating the negative effects of grazing on spikedace and loach minnow habitat and that further limitation of grazing would create conditions conducive to non-native species. Some commenters have also suggested that fencing may be detrimental to the species.''

(80) *Comment:* One commenter stated that estimates of riparian fencing and maintenance costs in the Economic Analysis are low.

Our response: As presented in Section 4.4 of the FEA, fencing and maintenance costs were developed using numerous published sources, as well as through discussions with both Forest Service and BLM. Fencing costs are presented as a range between $1,500 and $15,000 per river mile of fence construction, with an additional $110 to $2,600 in fence maintenance.

(81) *Comment:* One commenter suggests that data in the Economic Analysis on agricultural establishments in Greenlee County are incorrect. The commenter provides information on ranching operations on Eagle Creek. The comment states that the Four Drag Ranch, Seven Cross A Ranch, Anchor Ranch, Double Circle Ranch, and Tule Ranch are located on Eagle Creek.

Our response: Appendix B, Exhibits B–2, B–3, and B–4 provide data on the number of farm operations, number of ranching operations, and annual sales by county, as reported by the National Agricultural Statistics Survey. Section 2 presents the number of establishments and employees in the Agriculture, Forestry, Hunting, and Fishing Support industries, as reported by the U.S. Census. A note was added to Exhibit 2–7 that clarifies the source of the data used and also refers readers to Appendix B, Exhibits B–2 through B–4. Although specific ranches are not named, Section 4 estimates that impacts on grazing activities on Eagle Creek may range from $5,000 to $126,000 over the next 20 years (discounted at seven percent).

(82) *Comment:* One commenter states that the potential loss of the ability to divert surface water and possibly groundwater is the most important economic, social, and environmental consideration in the Verde River unit, and that the cost associated with such a loss of water is not calculated into the examples provided in Chapter 7 of the Draft Economic Analysis.

Our response: Chapter 7 of the FEA focuses on potential impacts to residential and commercial development construction activities in critical habitat areas. Issues related to water use are discussed in Chapter 3 of the analysis. Section 3.5.1 specifically discusses water use in the Verde Valley, and provides estimates of the number of potentially affected surface water users and groundwater wells. Potentially affected agricultural lands within the Verde River Complex are valued at between $3.1 million and $30.3 million.

(83) *Comment:* One commenter states that the Economic Analysis did not discuss decreed water rights associated with surface water diversion ditches and how those decreed rights will be adversely impacted by the critical habitat designation, or what data will be relied upon in determining subflow.

Our response: Section 3 of the Economic Analysis states that future impacts on water users are possible due to spikedace and loach minnow conservation efforts if less water is made available for diversion to accommodate the spikedace and loach minnow. The analysis also states that there are currently no data that indicate whether existing or future diversions of water (including groundwater use) reduce stream flow or modify hydrologic conditions to a degree that adversely impact the spikedace and loach minnow or their habitat. In addition, hydrologic models are unavailable to assess the role of any specific groundwater pumping activity or surface water diversion in determining stream flow or other hydrologic conditions within critical habitat. As such, this analysis does not quantify the probability or extent to which water use would need to be curtailed or modified to remedy impacts on spikedace and loach minnow. It does, however, provide information on the potential scale of the economic impacts that could occur if requirements associated with spikedace and loach minnow conservation result in changes in water diversions or conveyance.

Specifically, the analysis addresses potential impacts on water used for irrigated agriculture. The analysis states that it is possible that irrigation activities could be affected if farmers make efforts to maintain adequate water quantity and flow for the spikedace and loach minnow in the future. Because agricultural water use comprises 98 percent of surface water use and 81 percent of groundwater use in counties that contain critical habitat, it appears most likely that, if additional water supplies are needed for these species, they would come from current agricultural water use. Thus, the analysis assumes that to accommodate spikedace and loach minnow, farmers may give up water and cease to farm, resulting in losses of agricultural land value. Should irrigated agriculture be curtailed to accommodate spikedace and loach minnow, approximately 830 acres within proposed critical habitat, or 6,310 acres that fall in the vicinity of critical habitat that are currently irrigated for cropland agriculture could be retired from production. The irrigated crop production at risk of being lost is valued at approximately $4.5 million ($2005) within proposed critical habitat areas, or approximately $38.5 million ($2005) including lands that rely on water diverted from proposed critical habitat. Thus, the total cropland value potentially foregone ($38.5 million in $2005) is included in high end estimates of impacts on water use.

(84) *Comment:* One commenter states that nothing was included on the costs to retire farm and ranchland along the San Pedro River.

Our response: Section 3 of the Economic Analysis identifies, to the extent possible, water users potentially affected by spikedace and loach minnow conservation efforts. Exhibit 3–7 includes a description of 64 acres of cropland that fall within the San Pedro River segment, and 720 acres of cropland that fall within the vicinity of proposed critical habitat. These acres are valued at $394,000 to $4.5 million (2005 dollars).

(85) *Comment:* Two commenters state that the Economic Analysis fails to consider impacts of the rule on the Arizona Water Settlements Act of 2004, Public Law 108–451.

Our response: Section 3.5.5 of the FEA provides additional detail provided by the commenters about the 2004 Arizona Water Settlements Act (Pub. L. 108–451) as it relates to the proposed stretch of the Gila River in New Mexico.

(86) *Comment:* One commenter states that the Economic Analysis makes no attempt to quantify the impacts to farming activities in the Gila Valley. The commenter further states that the Service cannot simply declare that, due to data and model limitations, the analysis is not able to answer the question of whether impacts to water users are likely.

Our response: Section 3.5.3 of the FEA discusses potential impacts of spikedace and loach minnow conservation activities on the Middle Gila/Lower San Pedro/Aravaipa Creek Complex (Complex 3). As stated in the analysis, ''approximately 135 acres of lands used for cropland irrigation are located within Complex 3, and 1,220 acres are located in the valley that contains proposed critical habitat. The value of croplands in proposed critical habitat is approximately $11,000, while lands in the vicinity of proposed critical habitat are valued at approximately $7.5 million. Approximately $15,000 in Natural Resource Conservation Service funding was allocated to farms in proposed critical habitat areas on these segments in 2005.'' The value of these at-risk agricultural lands are included in impact estimates for this unit. Thus, while the Economic Analysis does not identify the likelihood of these impacts, it does quantify them and include them in potential future cost estimates.

(87) *Comment:* One commenter states that the projected project modification costs are estimated at $13,500 per water

project resulting from the critical habitat designation, and that this estimate is based on estimates of costs at Fort Huachuca. The commenter states that project modification costs at Fort Huachuca are costing ''tens-of-millions of dollars.'' The commenter states that Phelps Dodge has recently incurred costs in excess of one million dollars for southwestern willow flycatcher mitigation, and thus water project cost estimates for spikedace and loach minnow critical habitat are low.

Our response: The FEA includes specific cost estimates for particular water projects expected to occur within proposed critical habitat areas in Chapter 3 of the FEA. Typical project modifications for water projects in the past have included minimizing activities within the wetted channel, ensuring no pollutants enter surface waters, replanting riparian vegetation, monitoring for up to ten years, and conducting research studies. Future project modifications are assumed to be similar to those associated with a low-flow gauge installation to measure flow in the Verde River that occurred as part of a section 404 permit from U.S. Army Corps of Engineers, or $13,500 per project. Costs associated with the past consultation on Fort Huachuca are not included as part of these estimates, nor are they included in the analysis, as Fort Huachuca falls well outside the boundaries of proposed critical habitat, and downstream of proposed habitat areas. Quantified costs associated with water-related projects also include potential costs associated with costs of retiring agricultural cropland in order to provide sufficient water for the species. Potential costs to municipal, industrial and Tribal water use are also discussed, but not quantified. Expenditures made on behalf of the southwestern willow flycatcher are not relevant to this analysis.

Mining Impacts

(88) *Comment:* One commenter states that the Economic Analysis failed to adequately evaluate impacts to mining operations and water use in the arid southwest as a result of the proposed designation, resulting in a dramatic understatement of economic impacts. The commenter commissioned a report that estimates economic impacts to Phelps's Dodge's operations at the Tyrone Mine alone to exceed $100 million.

Our response: Section 5 of the FEA evaluates potential impacts to mining operations. Section 3 of the analysis addresses impacts to water use that may occur in order to protect the spikedace and loach minnow. Specifically, the analysis states that:

> ''While few active mineral mining activities occur within the proposed critical habitat, the mining industry has expressed concern that water use by existing or potential mining operations could be affected by endangered species conservation activities, particularly the designation of critical habitat. Critical to an understanding of the potential for impacts on water diversions or conveyance is an understanding of the probability and magnitude of any such changes. As detailed in this section, there is currently no data that indicates whether existing or future diversions of water for mining activities (including groundwater use) reduces stream flow or modifies hydrologic conditions to a degree that adversely impacts the spikedace and loach minnow or their habitat. In addition, hydrologic models are unavailable to assess the role of any specific mining facility's groundwater pumping or surface water diversions in determining stream flow or other hydrologic conditions within critical habitat. As such, this analysis does not quantify the probability or extent to which water use for mining purposes would need to be curtailed or modified to remedy impacts on spikedace and loach minnow.
>
> Given these data and model limitations, this analysis does not answer the question of whether impacts to mining operations are likely (i.e., the probability of such impacts), or define the expected magnitude of these impacts. It does, however, provide information on the potential scale of the economic impact that could occur if requirements associated with spikedace and loach minnow conservation result in changes in water diversions or conveyance. Specifically, to allow for an understanding of the economic activities that could be at risk if modifications to water use or conveyance are required, this analysis provides data on the location of mining activities potentially associated with CHD (critical habitat designation) areas, as well as data on the regional economic importance of these operations.''

The commenter provides hypothetical situations in which water currently used by mining operations may be lost to mining activities, and calculates a value of the lost water rights and associated replacement costs. While we do not disagree that, should the water be lost to mining activities, such costs could occur, there remains considerable uncertainty as to the likelihood of such events. Nonetheless, the revised analysis includes estimates of potential losses provided by the commenter in Section 5 of the analysis, to provide additional context for understanding the potential magnitude of impacts, should they occur.

(89) *Comment:* One commenter states that the Economic Analysis does not identify all of the Phelps Dodge mines that may be affected by critical habitat designation. Potentially affected mines include Morenci Mine, Tyrone Mine, Christmas Mine, and United Verde Mine. The commenter further states that the Economic Analysis does not consider potential effects to Phelps Dodge grazing and agricultural activities related to proposed critical habitat.

Our response: Section 5 of the Draft Economic Analysis identified the Morenci Mine, the Tyrone Mine, and the Christmas Mine as being potentially affected by proposed critical habitat. Because the United Verde Mine falls outside of proposed critical habitat and has been inactive since 1953, it was not specifically described in the Draft Economic Analysis. The FEA now includes a discussion of impacts to United Verde Mine along with the other mines. As described by the commenter, current activities at the United Verde Mine area primarily include leasing water to agricultural activities. Potential impacts of proposed critical habitat on agricultural water use are addressed in Section 3 of the FEA. Potential impacts of proposed critical habitat on ranching activities, for all landowners, are addressed in Section 4 of the FEA.

(90) *Comment:* One commenter states that the Economic Analysis fails to consider the replacement costs associated with water users that may be impacted by the critical habitat designation. These costs are extremely high because water supplies in the west are scarce and not easily replaceable. Other costs relating to impacts on water use not considered include search, infrastructure, and lost profits from curtailed operations at mining facilities.

Our response: The revised analysis includes estimates of potential losses provided by the commenter in Section 5 of the analysis. As stated in Response 87, it is not contested that, should water be lost to mining activities as a result of conservation activities for the spikedace and loach minnow, costs to the mining industry would be incurred. However, considerable uncertainty exists as to the likelihood, magnitude, and specific costs of water losses.

Small Business Impacts

(91) *Comment:* One commenter states that the Economic Analysis would be clearer if it reported the number of developers that are likely to be affected in the small business analysis.

Our response: Appendix B, Small Business and Energy Impacts Analyses, considers the extent to which the analytic results presented in the main body of the FEA reflect potential future impacts to small businesses. Appendix B has been revised to provide additional details about the number of developers

potentially affected by proposed critical habitat designation.

(92) *Comment:* One commenter states that the Economic Analysis would be stronger if it provided data on the impact of critical habitat on small entities that thrive on the area's recreational activities. To collect such information, the commenter suggests that the Service seek public input on the reduction of fishing activity if stocking is curtailed.

Our response: Appendix B considers the extent to which the analytic results presented in the main body of the FEA reflect potential future impacts to small businesses. As stated in the Appendix, ''the future impact of proposed CHD on the stocking regimes in these reaches is unknown, as is the reduction in fishing activity that would occur if stocking is curtailed. Further, it is unknown whether non-native fish stocking may be replaced with catchable native fish stocking (e.g. Apache trout). Thus, this analysis estimates the value of angler days at risk if sportfish stocking were discontinued on these reaches as part of the high end estimates. Angling trips are valued at approximately $8.6 million over 20 years (or $816,000 annually), assuming a discount rate of 7 percent. It should be noted that because State fish managers typically identify alternative sites for stocked fish when areas are closed to stocking, these angler days are likely to be redistributed to other areas rather than lost altogether. Thus, the high-end estimate does not consider the possibility that rather than not fishing at all, recreators will visit alternative, less desirable fishing sites. Existing models of angler behavior in these areas were not available to refine this estimate.'' The Appendix further states that ''if, as in the high-end estimate of impacts, angler trips to the two stream reaches that currently stock non-native fish are not undertaken, localized impacts on anglers and, in turn, small businesses that rely on fishing activities could occur. These impacts would be spread across a variety of industries including food and beverage stores, food service and drinking places, accommodations, transportation, and sporting goods.'' To conduct a survey of specific potential effects of closures is beyond the scope of this analysis. The revised Appendix does, however, include a reference to public comment received regarding a past store closure that occurred due to past area closures.

(93) *Comment:* One commenter states that the average number of acres in farms applied in the small business analysis is skewed due to the inclusion of a few very large (non small-business) farms. The commenter suggests that using the median farm size would improve results. The commenter also states that, because the Economic Analysis does not provide data on the impacts on beef cattle ranching operations, it is difficult to determine whether there will be a significant impact on this industry. The commenter also states that using the average revenues of all ranching operations, including both large and small business, likely skews the average to the upper end by including a few large ranches.

Our response: Appendix B considers the extent to which the analytic results presented in the main body of the FEA reflect potential future impacts to small businesses. Appendix B has been revised to estimate the number of affected farms using average revenues as well as using median revenues. Appendix B does provide data on the impact to beef cattle ranching operations, including revenue data for beef cattle ranching operations, the number of ranches in each county, and the expected impact of the proposed rule on these entities. While specific revenue data for affected small beef cattle ranches is not readily available, a proxy for this is developed in the revised Appendix by eliminating the revenue outlier (Pinal County) from the average revenue estimates. This results in an estimate of average revenues for small ranches in the region of $42,500. The analysis therefore estimates that approximately 72 small ranching operations may experience a reduction in revenues of between 0.9 and 22 percent of annual revenues annually. These ranches represent 4.7 percent of ranches in affected counties, or one percent of ranches in New Mexico and Arizona.

(94) *Comment:* One commenter states that estimated average revenue for ranchers in Greenlee County of $133,000 is incorrect, and that, given the current drought, it is likely to be too high.

Our response: Appendix B of the FEA lists the average revenues for cattle and calf ranches in Greenlee County as $19,100. We have incorporated an acknowledgement that revenue is dependent on, and may fluctuate with, natural conditions such as drought.

(95) *Comment:* One commenter states that there is no attempt to define baseline conditions in order to conduct a ''with'' and ''without'' analysis as prescribed by Executive Order 12866.

Our response: The economic analysis estimates the total cost of species conservation activities without subtracting the impact of pre-existing baseline regulations (i.e., the cost estimates are fully co-extensive). In 2001, the U.S. 10th Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (*New Mexico Cattle Growers Ass'n* v. *U.S.F.W.S.*, 248 F.3d 1277 (10th Cir. 2001)). The economic analysis complies with direction from the U.S. 10th Circuit Court of Appeals.

Summary of Changes From Proposed Rule

Based upon our review of the public comments, economic analysis, environmental assessment, issues addressed at the public hearings, and any new relevant information that may have become available since the publication of the proposal, we reevaluated our proposed critical habitat designation and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology, status, and threats, this final rule differs from the proposal by the following:

(1) We excluded lands of the San Carlos Apache, White Mountain Apache, and Yavapai-Apache Tribes pursuant to section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(2) We excluded lands owned by the Phelps Dodge Corporation on the Gila River and Eagle Creek pursuant to section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below.)

(3) We excluded a portion of the Verde River pursuant to section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below.)

(4) We modified the primary constituent elements for clarity and to reflect additional information received during the public comment period.

(5) We made technical corrections to township, range, section legal descriptions, the confluence point of the East Fork Black and North Fork East Fork Black rivers, and the upstream endpoint on Eagle Creek. Overall mileage from the proposed to the final designation was slightly reduced by approximately 0.5 river miles as a result of these corrections.

(6) Eagle Creek is no longer included in the designation of critical habitat for the spikedace, as further review of the available information shows this area does not meet our definition of occupied, and therefore does not meet

our criteria for defining critical habitat for the spikedace.

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 necessary that 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, 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 only if the features essential to the conservation of the species therein 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 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, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), along with 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 and establish procedures 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, the Service generally uses the listing package as a primary source of information. 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 and commercial 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.

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 consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We determined the primary constituent elements for spikedace and loach minnow from studies on their habitat requirements and population biology including, but not limited to, Barber et al. 1970, pp. 10–12; Minckley 1973; Anderson 1978, p. 7, 17, 31–37, 41, 54; Barber and Minckley 1983, pp. 34–39; Turner and Tafanelli 1983, pp. 15–20; Propst et al. 1986, p. 40–72, 82–83; Hardy et al. 1990, pp. 19–20, 39; Douglas et al. 1994, pp. 12–14; Rinne

and Stefferud 1996, p. 14–17; and Velasco 1997, pp. 5–6.

Spikedace

The specific primary constituent elements required for the spikedace are derived from the biological needs of the species as described in the Background section of this document and below.

Space for Individual and Population Growth and Normal Behavior

Habitat Preferences

Spikedace have differing habitat requirements through their various life stages. Generally, adult spikedace prefer intermediate-sized streams with moderate to swift currents over sand, gravel, and cobble substrates (i.e., stream bottoms). Preferred water depths of adults are less than 11.8 in (30 cm) (Barber and Minckley 1966, p. 321; Minckley 1973, p. 114; Anderson 1978, p. 17; Rinne and Kroeger 1988, p. 1; Hardy 1990, pp. 19–20, 39; Sublette et al. 1990, p. 138; Rinne 1991, pp. 8–10; Rinne 1999, p. 6). As discussed below, larval and juvenile spikedace occupy different habitats than adults.

Flow Velocities. Studies on flow velocity have been completed on the Gila River, Aravaipa Creek, and the Verde River. In these studies, flows measured in habitat occupied by adult spikedace ranged from 23.3 to 70.0 cm/second (9.2–27.6 in/second) (Barber and Minckley 1966, p. 321; Hardy 1990, pp. 19–20, 39; Propst et al. 1986, p. 41; Rinne 1991, pp. 9–10; Rinne and Kroeger 1988, p. 1; Schreiber 1978, p. 4). Studies on the Gila River indicated that juvenile spikedace occupy areas with velocities of approximately 16.8 cm/second (6.6 in/second) while larval spikedace were found in velocities of 8.4 cm/second (3.3 in/second) (Propst et al. 1986, p. 41).

Propst et al. 1986 (pp. 47–49) examined flow velocities in occupied spikedace habitats as they varied by season. During the warm season (June–November), occupied spikedace habitats in the Gila River had mean flow velocities of 19.3 in/second (49.1 cm/second) at one site and 7.4 in/second (18.8 cm/second) at the second site. During the cold season (December–May), mean flow velocities at these same sites were 15.5 in/second (39.4 cm/second) and 8.4 in/second (21.4 cm/second). It is believed that spikedace seek areas in the stream that offer warmer water temperatures during cooler seasons to offset their decreased metabolic rates. Where water depth remains fairly constant throughout the year (*e.g.,* the first site), slower velocities provided pockets of warmer water temperatures in the stream. In areas of fairly constant flow velocities (e.g., the second site), warmer water temperatures were found in those portions of the stream with shallower water (Propst et al. 1986, pp. 47–49).

Larval and juvenile spikedace, which occupy different habitats than adults, tend to occupy shallow, peripheral portions of streams that have slower currents (Anderson 1978, p.17; Propst et al. 1986, pp. 40–41). Once they emerge from the gravel of the spawning riffles, spikedace larvae disperse to stream margins where water velocity is very slow or still. Larger larval and juvenile spikedace (those fish 1.0 to 1.4 inches (25.4 to 35.6 mm) in length) occurred over a greater range of water velocities than smaller larvae, but still occupied water depths of less than 12.6 inches (32.0 cm) (Propst et al. 1986, p. 40). Juveniles and larvae are also occasionally found in quiet pools or backwaters (e.g., pools that are connected with, but out of, the main river channel) lacking streamflow (Sublette et al. 1990, p. 138).

Outside of the breeding season, which occurs between April and June, eighty percent of the spikedace collected in a Verde River study used run and glide habitat. For this study, a glide was defined as a portion of the stream with a lower gradient (0.3 percent), versus a run which had a slightly steeper gradient (0.3–0.5 percent) (Rinne and Stefferud 1996, p. 14). Spikedace in the Gila River were most commonly found in riffle areas of the stream with moderate to swift currents (Anderson 1978, p. 17) and some run habitats (J.M. Montgomery 1985, p. 21), as were spikedace in Aravaipa Creek (Barber and Minckley 1966, p. 321).

Seasonal differences in habitats utilized by spikedace have been noted in the upper Gila drainage, for both the winter and breeding seasons. For example, spikedace were found to use shallower habitats (<6.6 inches, <16.8 cm) in the winter, and deeper habitats (6.6 to 12.6 inches, 16.8–32.0 cm) during warmer months (Propst et al. 1986, p. 47).

Specific habitat usage has been noted for the breeding season as well. During the breeding season, female and male spikedace become segregated, with females occupying deeper pools and eddies and males occupying riffles flowing over sand and gravel beds in water approximately 3.1 to 5.9 inches (7.9–15.0 cm) deep. Females then enter the riffles occupied by the males before ova are released into the water column (Barber et al. 1970, pp.11–12).

Streams in the southwestern United States have a wide fluctuation in flows and some are periodically dewatered. While portions of stream segments included in this designation may experience dry periods, they are still considered important because the spikedace is adapted to stream systems with fluctuating water levels. While they can not persist in dewatered areas, spikedace will use these areas as connective corridors between occupied or seasonally occupied habitat when they are wetted.

Substrates. Spikedace are known to occur in areas with low to moderate amounts of fine sediment and substrate embeddedness (filling in of spaces by fine sediments), which are important features for healthy development of eggs. Spawning has been observed in areas with sand and gravel beds and not in areas where fine materials of a particle size less than sand coats the sand or gravel substrate, as described above. Additionally, low to moderate fine sediments ensure that eggs remain well-oxygenated and will not suffocate due to sediment deposition (Propst et al. 1986, p. 40).

Spikedace were found over sand and gravel substrates in the glide-run and low-gradient riffle habitats in both the upper Verde (Rinne and Stefferud 1996, p. 21) and the upper Gila (Propst et al. 1986, p. 40; Rinne and Deason 2000, p. 106). In a study of a small portion of the Verde River, spikedace were found in glide-run habitats where substrates were characterized by approximately 29 percent sand or fines (silty sand) (Rinne 2001, p. 68). In other studies of the Verde River over a two-year period, spikedace were found in areas with a percentage of fine content substrate that varied from 1 to 28 percent (Rinne 2001, p. 68). Neary et al. (1996, p. 24) noted that spikedace were found in habitats with substrates of less than 10 percent sand. While there is some variability in the percent of sand or fine substrate in occupied spikedace habitat, Neary et al. (1996, p. 24) concluded that, based on the higher density of spikedace present in areas with lower percentages of sand in the substrate, spikedace favored habitats with lower sand content.

Substrates are, in part, a reflection of the gradients and velocities of the streams in which they are found. Sand and gravel typically decrease as gradient and velocity increase (Rinne and Stefferud 1996, p. 14). Spikedace numbers in the Verde River increased almost three times (from 18 to 52 individuals) when the fine component of the substrate decreased from about 27 percent down to 7 percent (Neary et al. 1996, p. 26), indicating that spikedace prefer habitats with lower amounts of fines. Sand content in all glide-run

spikedace habitats in the Verde and Gila Rivers in 2000 was 18 and 20 percent (Rinne 2001, p. 68). However, because substrates are determined in part by gradient and velocity of the stream, the type of substrate should not be used alone in determining suitable spikedace habitat.

Sixty percent of spikedace larvae in the Gila River were found over sand-dominated substrates, while 18 percent were found over gravel, and an additional 18 percent found over cobble-dominated substrates. While 45 percent of juvenile spikedace were found over sand substrates, an additional 45 percent of the juveniles were found over gravel substrates, with the remaining 9 percent associated with cobble-dominated substrates (Propst et al. 1986, p. 40).

The degree of substrate embeddedness may also affect the prey base for spikedace. As discussed below, mayflies constitute a significant portion of the spikedace diet. Suitable habitat for some mayflies includes pebbles or gravel for clinging (Pennak 1978, p. 539). Excess sedimentation would cover or blanket smaller pebbles and gravel, resulting in a lack of suitable habitat for mayflies, and a subsequent decrease in available prey items for spikedace.

Flooding. Rainfall in the southwest is generally characterized as bimodal, with winter rains of longer duration and less intensity and summer rains of shorter duration and higher intensity. As we discuss below, periodic flooding appears to benefit spikedace in three ways: (1) Removing excess sediment from some portions of the stream; (2) removing nonnative fish species from a given area; and (3) increasing prey species diversity.

Flooding in Aravaipa Creek has resulted in the transport of heavier loads of sediments such as cobble, gravel, and sand that are deposited where the stream widens, gradient flattens, and velocity and turbulence decrease. Dams formed by such deposition can temporarily cause water to back up and break into braids downstream of the dam. The braided areas provide excellent nurseries for larval and juvenile fishes (Velasco 1997, pp. 28–29).

On the Gila River in New Mexico, flows fluctuate seasonally with snowmelt, causing spring pulses and occasional floods, and late-summer or monsoonal rains producing floods of varying intensity and duration. These high flows benefit spikedace spawning and foraging habitat (Propst et al. 1986, p. 3) as described above. Peak floods can modify channel morphology and sort and rearrange stream bed materials (Stefferud and Rinne 1996, p. 80).

Floods likely benefit native fish by breaking up embedded bottom materials (Mueller 1984, p. 355). A study of the Verde River analyzed the effects of flooding in 1993 and 1995, finding that these floods had notable effects on both native and nonnative fish species. Among other effects, these floods on the Verde River either stimulated spawning or enhanced recruitment of three of the native species or may have eliminated one of the nonnative fish species (Rinne and Stefferud 1997, pp. 159, 162; Stefferud and Rinne 1996, p. 80).

Minckley and Meffe 1987 (pp. 99, 100) found that flooding, as part of a natural hydrograph, may temporarily remove nonnative fish species, which are not adapted to flooding. Thus flooding consequently removes the competitive pressures of nonnative fish species on native fish species which persist following the flood. Minckley and Meffe (1987, p. 99–100) studied the differential responses of native and nonnative fishes in seven unregulated and three regulated streams or stream reaches that were sampled before and after major flooding noted that fish faunas of canyon-bound reaches of unregulated streams invariably shifted from a mixture of native and nonnative fish species to predominantly, and in some cases exclusively, native forms after large floods. Samples from regulated systems indicated relatively few or no changes in species composition due to releases from upstream dams at low, controlled volumes. However, during emergency releases, effects to nonnative fish species were similar to those seen with flooding on unregulated systems.

There is some variability in fish response to flooding. Some nonnative species, such as smallmouth bass (*Micropterus dolomieui*) and green sunfish (*Lepomis cyanellus*), appear to be partially adapted to flooding, and often reappear in a few weeks (Minckley and Meffe, p. 100). In addition, Stefferud and Rinne (1996, p. 75) found that late-winter flooding affected the entire fish community, either stimulating reproduction or promoting recruitment (at least among the larger-size fishes), and possibly eliminating some nonnative species.

The onset of flooding also corresponds with an increased diversity of food items for spikedace. Reductions in the mainstream invertebrates, such as mayflies, cause the fish to expand its food base in an opportunistic manner. In addition, inflowing flood waters carry terrestrial invertebrates, such as ants, bees, and wasps (Hymenopterans), into aquatic areas (Barber and Minckley 1983, p.39).

Stream Gradient. Spikedace occupy streams with low to moderate gradients (Propst et al. 1986, p. 3; Rinne and Stefferud 1996, p. 14; Stefferud and Rinne 1996, p. 21; Sublette et al. 1990, p. 138). Specific gradient data are generally lacking, but the gradient of occupied portions of Aravaipa Creek and the Verde River varied between approximately 0.3 to <1.0 percent (Barber et al. 1970, p. 10; Rinne and Kroeger 1988, p. 2; Rinne and Stefferud 1996, p. 14).

Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

Nonnative aquatic species. One of the primary reasons for the decline of native species is the presence of nonnative fishes. Fish evolution in the arid American west is linked to disruptive geologic and climatic events that acted in concert over evolutionary time to decrease the availability and reliability of aquatic ecosystems. The fragmentation and reduction of aquatic ecosystems resulted in a fish fauna that was both diminished and restricted in the arid west. Lacking exposure to a wider range of species, western species seem to lack the competitive abilities and predator defenses developed by fishes from regions where more species are present (Douglas et al. 1994, pp. 9–10). The introduction and spread of nonnative species has been identified as one of the major factors in the continuing decline of native fishes throughout North America and particularly in the southwestern United States (Miller 1961, p. 365, 377, 397–398; Lachner et al. 1970, p. 22; Ono et al. 1983, p. 90; Moyle 1986, pp. 28–34; Moyle et al. 1986, pp. 416–423; Carlson and Muth 1989, pp. 232–233; Fuller et al. 1990, p. 1). Miller et al. (1989, p. 1) concluded that nonnative species were a causal factor in 68 percent of the fish extinctions in North America in the last 100 years. For 70 percent of those fish still extant, but considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Lassuy 1995, p. 392). In Arizona, release or dispersal of recently introduced nonnative aquatic organisms is a continuing phenomenon (Rosen et al. 1995, pp. 255–256, 258; U.S. Fish and Wildlife Service 2001a, pp. 26–32). Aquatic nonnative species are introduced and spread into new areas through a variety of mechanisms, intentional and accidental, authorized and unauthorized. Mechanisms for nonnative dispersal in the southwestern

United States include interbasin water transfer, sport fish stocking, aquaculture, aquarium releases, baitbucket release (release of fish used as bait by anglers), and biological control (e.g., the introduction of one species to control another species) (U.S. Fish and Wildlife Service 2001a, pp. 13, 37).

In the Gila River basin, introduction of nonnatives is considered a major factor in the decline of all native fish species (Minckley 1985, p. 20–21; Williams et al. 1985, p. 1; Minckley and Deacon 1991, p. 17). Aquatic and semi-aquatic mammals, reptiles, amphibians, crustaceans, mollusks (snails and clams), insects, zoo- and phytoplankton, parasites, disease organisms, algae, and aquatic and riparian vascular plants that are outside of their historical range have all been documented to adversely affect aquatic ecosystems (Cohen and Carlton 1995, pp. 1–8). As described below, the nonnative fishes have been demonstrated to pose a significant threat to Gila River basin native fishes, including spikedace and loach minnow (Minckley 1985, p. 108–109; Williams et al. 1985, p. 19). The aquatic ecosystem of the central Gila River basin has relatively small streams with warm water and low gradients, and many of the native aquatic species are small in size. Therefore, much of the threat to native fishes comes from small nonnative fish species, as has also been noted for southern Nevada aquatic ecosystems (Deacon et al. 1964, p. 385). Examples of this are the impacts of mosquitofish (*Gambusia affinis*) and red shiner (*Cyprinella lutrensis*), which may compete with or prey upon native fish in the Gila River basin (Meffe 1985, p. 173–174, 176–180; Douglas et al. 1994, pp. 13–17).

The effects of nonnative fish competition on spikedace can be classified as either interference or exploitive. Interference competition occurs when individuals directly affect others, such as by fighting, producing toxins, or preying upon them (Schoener 1983, p. 257). Exploitive competition occurs when individuals affect others indirectly, such as through use of common resources (Douglas et al. 1994, p. 14).

Nonnative fishes known to occur within the historical range of the spikedace include channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), red shiner, fathead minnow (*Pimephales promelas*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), rainbow trout (*Oncorynchus mykiss*), mosquitofish, carp (*Cyprinus carpo*), bluegill (*Lepomis macrochiris*), yellow bullhead (*Ameiurus natalis*), black bullhead (*Ameiurus melas*), and goldfish (*Carassius auratus*) (AGFD Native Fish Database 2005, ASU 2002). Additionally, as discussed below, nonnative parasites introduced incidentally with nonnative species may threaten spikedace populations. Although parasites are normal in fish populations and typically do not cause mortality in their host, the effects of nonnative parasites can be significant, especially when combined with other stressors such as poor habitat conditions (U.S. Geological Survey 2004, p. 1; 2005, p. 2–3).

There is evidence of the negative impacts of nonnative predators on native fishes for several stream reaches. The effect of nonnative fish preying on natives such as spikedace is classified as interference competition. Channel catfish, flathead catfish, and smallmouth bass all prey on native fishes including spikedace, as evidenced by prey remains of native fishes in the stomachs of these predatory species (Propst et al. 1986, p. 82, Bonar et al. 2004, p. 13, 16–21). Native fish species declines appear linked to increases in nonnative fish species. For example, in 1949, 52 spikedace were collected at Red Rock while channel catfish composed only 1.65 percent of the 607 fish collected. However, in 1977, only six spikedace were located at the same site, and the percentage of channel catfish had risen to 14.5 percent of 169 fish collected. The decline of spikedace and the increase of channel catfish is likely related (Anderson 1978, p. 51) because of this correlation and the evidence of predation by catfish on spikedace.

Similar interactions between native and nonnative fishes were observed in the upper reaches of the East Fork of the Gila River. In this system, native fish were limited, with spikedace being rare or absent, while nonnative channel catfish and smallmouth bass were moderately common prior to 1983 and 1984 floods. Post-1983 flooding, adult nonnative predators were generally absent and spikedace were collected in moderate numbers in 1985 (Propst et al. 1986, p. 83).

Green sunfish (*Lepomis cyanellus*) is also thought to be a predator, likely responsible for replacement of natives like spikedace, through predation. While no direct studies have been completed on predation by green sunfish on spikedace, they are a known predator that occurs within occupied spikedace areas.

Interference competition occurs with species such as red shiner. Red shiner appear to be particularly detrimental to spikedace because although spikedace and shiners are naturally separated by geography (i.e., allopatric), they occupy essentially the same habitat types. Red shiner has an inverse distribution pattern to spikedace in that, generally, where red shiner is present, spikedace are absent (Minckley 1973, p. 138). Where the two species occur together, there is evidence of displacement of spikedace to less suitable habitats that it otherwise did not occupy (Marsh et al. 1989, pp. 67, 107). As a result, if red shiners are present, suitable habitat available for spikedace is reduced. Range expansion and species recovery may then be curtailed due to red shiner presence.

One study focused on potential impacts of red shiner on spikedace in three areas; (1) Portions of the Gila River and Aravaipa Creek having only spikedace; (2) a portion of the Verde River where spikedace and red shiner have co-occurred for three decades; and (3) a portion of the Gila River where red shiner recently invaded areas and where spikedace had never been recorded. The study indicated that, for reaches where only spikedace were present, spikedace displayed a preference for slower currents and smaller particles in the substrate than were generally available throughout the Gila River and Aravaipa Creek systems. Where red shiner occur in the Verde River, the study showed that red shiner occupied waters that were generally slower and with smaller particle size in the substrate than were, on average, available in the system. The study concludes that spikedace, where co-occurring with red shiner, move into currents swifter than those selected when in isolation, while red shiner occupy the slower habitat, whether they are alone or with spikedace (Douglas et al. 1994, pp. 14–16).

Western mosquitofish were introduced outside of their native range to help control mosquitoes. Because of their aggressive and predatory behavior, mosquitofish may negatively affect populations of small fish through predation and competition (Courtenay and Meffe 1989, p. 320, 322, 324). Introduced mosquitofish have been particularly destructive in the American west where they have contributed to the elimination or decline of populations of federally threatened and endangered species, such as the Gila topminnow (*Poeciliopsis occidentalis occidentalis*) (Courtenay and Meffe 1989, p. 323–324).

The Asian tapeworm (*Bothriocephalus acheilognathi*) was introduced into the United States via imported grass carp in the early 1970s. It has since become well established in

the southeast and mid-southern United States and has been recently found in the southwest including the Gila Basin. The definitive host in the life cycle of the Asian tapeworm is cyprinid (fish in the minnow family) fishes. There is a potential threat to spikedace as well as to the other native fishes in Arizona because of the presence of this parasite in the Gila Basin and the presence of cyprinid fish. The Asian tapeworm affects fish health in several ways. The direct impacts to fish are through impeding digestion of food as it passes through the intestinal track, and loss of nutrients as the worm feeds off the fish; large enough numbers of worms cause emaciation and starvation. An indirect effect is that weakened fish are more susceptible to infection by other pathogens. This parasite can infest many species of fish and is carried into new areas along with nonnative fishes or native fishes from contaminated areas. Asian tapeworm may be a significant source of mortality of other fish species in the Colorado River basin (U.S. Geological Survey 2004, p. 1, 2005, p. 2).

Anchor worm (*Lernaea cyprinacea*) (Copepoda), also a nonnative species, is an external parasite, and is unusual in that it has little host specificity, infecting a wide range of fishes and amphibians. Additionally, infection has been known to kill large numbers of fish due to tissue damage and secondary infection of the attachment site (Hoffnagle and Cole 1997, p. 24). Presence of this parasite in the Gila River basin is a threat to the Gila chub and other native fish. In July 1992, the Bureau of Land Management (BLM) found Gila chub that were heavily parasitized by *Lernaea cyprinacea* in Bonita Creek. These fish were likely more susceptible to parasites due to physiological stress as a result of degraded habitat and decreased water flows due to water withdrawals. Creef and Clarkson (1993, p. 1, p. 5) suspected that infestations by *Lernaea cyprinacea* caused high mortality of stocked native fish, razorback sucker (*Xyrauchen texanus*) and Colorado pikeminnow (*Ptycocheilus lucius*).

The nonnative parasite *Ichthyophthirius multifiliis* (''Ich'') is a potential threat to spikedace. ''Ich'' disease has occurred in some Arizona streams, probably favored by high temperatures and crowding as a result of drought (Mpoame 1982, p. 46). This protozoan becomes embedded under the skin and within the gill tissues of infected fish. When the ''Ich'' matures, it leaves the fish, causing fluid loss, physiological stress, and sites that are susceptible to infection by other pathogens. If ''Ich'' is present in large enough numbers they can also impact respiration because of damaged gill tissue. This parasite has been observed on the Sonora sucker (*Catostomus insignis*), a species common throughout the Gila River basin, and ''Ich'' does not appear to be hostspecific, so it could be transmitted to other species. ''Ich'' is known to be present in Aravaipa Creek (Mpoame 1982, p. 46).

Food

Food Items. Spikedace are active, highly mobile fish that visually inspect drifting materials both at the surface and within the water column. Gustatory inspection, or taking potential prey items into the mouth before either swallowing or rejecting it, is also common (Barber and Minckley 1983, p. 37). Prey body size is small, typically ranging from 0.08 to 0.20 inches (2 to 5 mm) long (Anderson 1978, p. 36).

Stomach content analysis of spikedace determined that mayflies, caddisflies, true flies, stoneflies, and dragonflies are all prey items for spikedace. In one Gila River study, the frequency of occurrence was 71 percent for mayflies, 34 percent for true flies, and 25 percent for caddisflies (Propst et al. 1986, p. 59). A second Gila River study of four samples determined that total food volume was comprised of 72.7 percent mayflies, 17.6 percent caddisflies, and 4.5 percent true flies (Anderson 1978, pp. 31–32). At Aravaipa Creek, mayflies, caddisflies, true flies, stoneflies, and dragonflies were all prey items for spikedace, as were some winged insects and plant materials (Schreiber 1978, pp. 12–16, 29, 35–37).

At Aravaipa Creek, spikedace consumed a total of 36 different prey items. Mayflies constituted the majority of prey items, followed by true flies. Of the mayflies consumed, 36.5 percent were adults, while 33.3 percent were nymphs. Terrestrial invertebrates, including ants, wasps, and spiders, were also consumed, as were beetles, true bugs, caddisflies, and water fleas (Barber and Minckley 1983, pp. 34–38).

Spikedace diet varies seasonally (Barber and Minckley 1983, pp. 34–35). Mayflies dominated stomach contents in July, but declined in August and September, increasing in importance again between October and June. When mayflies were available in lower numbers, spikedace consumed a greater variety of foods, including true bugs, true flies, beetles, and spiders.

Spikedace diet varies with age class as well. Young spikedace, which measure less than 0.9 inches (22.9 mm) long, fed on a diversity of small-bodied invertebrates occurring in and on sediments along the margins of the creek. True flies were found most frequently, but water fleas and aerial adults of aquatic and terrestrial insects also provide significant parts of the diet. As juveniles grow and migrate into the swifter currents of the channel, mayfly nymphs (invertebrates between the larval and adult life stages, similar to juveniles) and adults increase in importance (Barber and Minckley 1983, pp. 36–37).

Spikedace are very dependent on aquatic insects for sustenance, and the production of the aquatic insects consumed by spikedace occurs mainly in riffle habitats (Propst et al. 1986, p. 59). As a result, habitat selection influences food items found in stomach content analyses. Spikedace in pools had eaten the least diverse foods while those from riffles contained a greater variety of taxa, indicating that the presence of riffles in good condition and abundance help to ensure that a sufficient number and variety of prey items will continue to be available for spikedace (Barber and Minckley 1983, pp. 36–37, 40).

Aquatic invertebrates that constitute the bulk of the spikedace diet have specific habitat parameters of their own. Mayflies, which constituted the largest percentage of prey items, spend their immature stages in fresh water. Mayfly nymphs occur in all types of fresh waters, wherever there is an abundance of oxygen, but they are most characteristic of shallow water. Mayflies found in spikedace stomach content analyses consisted of individuals from several genera, with individuals from the genus *Baetidae* constituting the highest percentage of prey from the mayfly order in the study by Schreiber (1978, p. 36). *Baetidae* are free-ranging species of rapid waters that maintain themselves in currents by clinging to pebbles. Spikedace also consumed individuals from two other mayfly genera (*Heptageniidae* and *Ephemerellidae*), which are considered ''clinging species'' as they cling tightly to stones and other objects and may be found in greatest abundance in crevices and on the undersides of stones (Pennak 1978, p. 539). The importance of gravel and cobble substrates is illustrated by the fact that these prey species, which make up the bulk of the spikedace diet, require these surfaces to persist.

Water Quality

Pollutants. Water with no or only minimal pollutant levels is essential for the survival of spikedace. Spikedace occur in areas where mining, agriculture, livestock operations, and

road construction and use are prevalent. Various pollutants are associated with these types of activities. For spikedace, waters should have low levels of pollutants such as copper, arsenic, mercury and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels (Baker 2005). In addition, for freshwater fish, dissolved oxygen should generally be greater than 3.5 cubic centimeters per liter (cc/l) (Bond 1979, p. 215). Below this, some stress may occur.

Fish kills have been documented in the San Francisco River (Rathbun 1969, pp. 1–2) and the San Pedro River (Eberhardt 1981, pp. 1–4, 6–9, 11–12, 14, 16, and Tables 2–8), both of which are within the species' historical range. In both instances, leaching ponds associated with copper mines released waters into the streams, resulting in elevated levels of toxic chemicals. For the San Pedro River, this included elevated levels of iron, copper, manganese, and zinc. Both incidents resulted in die-offs of species inhabiting the streams. Eberhardt (1981, pp. 1, 3, 9, 10, 14–15) notes that no bottom-dwelling aquatic insects, live fish, or aquatic vegetation of any kind were found for a 60-mi (97 km) stretch of river in the area affected by the spill. Rathbun (1969, pp. 1–2) reported similar results for the San Francisco River. The possibility for similar accidents, or pollution from other sources, exists throughout the ranges of these species due to their proximity to mines, communities, agricultural areas, and major transportation routes.

Temperature. Temperatures of occupied spikedace habitat vary with time of year. In May, water temperatures at Aravaipa Creek were uniformly 66.2 °F (19 °C) (Barber et al. 1970, p. 11). Summer water temperatures remained at no more than 80.6 °F (27 °C) at Aravaipa Creek (Barber et al. 1970, p. 14), and at a mean of 66.7 °F (19.3 °C) between June and November on the Gila River in the Forks area (at the Middle, West, and East Forks) and 69.4 °F (20.8 °C) in the Cliff-Gila Valley (Propst et al. 1986, p. 47). Winter water temperatures ranged between 69.1 °F (20.6 °C) in November down to 48.0 °F (8.9 °C) in December at Aravaipa Creek (Barber and Minckley 1966, p. 316). Between December and May, mean temperature in the Forks area was 46.0 °F (7.8 °C), and 53.1 °F (11.7 °C) in the Cliff-Gila Valley (Propst et al. 1986, p. 57). The overall range represented by these measures is between 46–80.6 °F (7.8–27.0 °C).

Recent studies by the University of Arizona focused on temperature tolerances of spikedace. In the study, fish were acclimated to a given temperature, and then temperatures were increased by 1 °C (33.8 °F) per day until test temperatures were reached. The study determined that no spikedace survived exposure of 30 days at 34 or 36 °C (93.2 or 96.8 °F), and that 50 percent mortality occurred after 30 days at 32.1 °C (89.8 °F). In addition, growth rate was slowed at 32 °C (89.6 °F), as well as at lower test temperatures of 10 °C and 4 °C (50 and 39.2 °F). Multiple behavioral and physiological changes were observed indicating that fish became stressed at 30, 32, and 33 °C (86, 89.6, and 91.4 °F) treatments. The study concludes that temperature tolerance in the wild may be lower due to the influence of additional stressors, including disease, predation, competition, or poor water quality. Survival of fish in the fluctuating temperature trials in the study likely indicates that exposure to higher temperatures for short periods during a day would be less stressful to spikedace. The study concludes that 100 percent survival of spikedace at 30 °C (86 °F) in the experiment suggests that little juvenile or adult mortality would occur due to thermal stress if peak water temperatures remain at or below that level (Bonar et al. 2005, pp. 7–8, 29–30).

Reproduction and Rearing of Offspring

As discussed above under flow velocities, spikedace use a variety of habitat types within the channel during their reproductive cycle and at various life stages. Although not typically associated with pools, pools are used by female spikedace during the breeding season while males remained in riffle habitats. Females leave the pools, generally on the downstream end of the riffle, and swim upstream to males in riffle habitat (Barber et al. 1970, pp.11–12). Unlike loach minnow that deposit their eggs in a hole or depression, spikedace spawn in shallow riffles and scatter their gametes (reproductive cells) into the water column. Spikedace eggs are adhesive and develop among the gravel and cobble of the riffles following spawning. Spawning in riffle habitat ensures that the eggs are well oxygenated and are not normally subject to suffocation by sediment deposition due to the swifter flows found in riffle habitats. However, after the eggs have adhered to the gravel and cobble substrate, excessive sedimentation could cause suffocation of the eggs (Propst et al. 1986, p. 40).

Primary Constituent Elements for the Spikedace

Pursuant to our regulations, we are required to identify the known physical and biological features (primary constituent elements) essential to the conservation of the spikedace. All stream complexes designated as critical habitat for the spikedace are occupied, are within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the primary constituent elements essential to the conservation of the spikedace are:

1. Permanent, flowing water with no or low levels of pollutants, including:

a. Living areas for adult spikedace with slow to swift flow velocities between 20 and 60 cm/second (8 and 24 in/second) in shallow water between approximately 10 cm (4 in) and 1 meter (40 in) in depth, with shear zones where rapid flow borders slower flow, areas of sheet flow (or smoother, less turbulent flow) at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;

b. Living areas for juvenile spikedace with slow to moderate water velocities of approximately 18 cm/second (8 in/second) or higher in shallow water between approximately 3 cm (1.2 in) and 1 meter (40 in) in depth;

c. Living areas for larval spikedace with slow to moderate flow velocities of approximately 10 cm/second (4 in/second) or higher in shallow water approximately 3 cm (1.2 in) to 1 meter (40 in) in depth; and

d. Water with dissolved oxygen levels greater than 3.5 cc/l and no or minimal pollutant levels for pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels.

2. Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

3. Streams that have:

a. Low gradients of less than approximately 1.0 percent;

b. Water temperatures in the approximate range of 35 to 86 °F (1.7 to

30.0 °C) (with additional natural daily and seasonal variation);

c. Pool, riffle, run, and backwater components; and

d. An abundant aquatic insect food base consisting of mayflies, true flies, caddisflies, stoneflies, and dragonflies.

4. Habitat devoid of nonnative aquatic species or habitat in which nonnative aquatic species are at levels that allow persistence of spikedace.

5. Areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

Units are designated based on sufficient PCEs being present to support one or more of the species's life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Loach Minnow

The specific primary constituent elements required for the loach minnow are derived from the biological needs of the species as described in the Background section of this proposal and below.

Space for Individual and Population Growth and Normal Behavior

As noted for the spikedace above, streams in the Southwestern United States have a wide fluctuation in flows and resulting habitat conditions at different times of the year. Loach minnow persist in these varying conditions and, as discussed below, several studies have documented habitat conditions at occupied sites.

Habitat Preferences

Flow Velocities. Loach minnow live on the bottom of small to large rivers, preferring shallow, swift, and turbulent riffles, living and feeding among clean, loose, gravel-to-cobble substrates (Anderson and Turner 1977, pp. 2, 6–7, 9, 12–13; Barber and Minckley 1966, p. 315; Britt 1982, pp. 10–13, 29–30; Lee et al. 1980, p. 365; Marsh et al. 2003, p. 666; Minckley 1981, p. 165; Velasco 1997, p. 28). Loach minnow are sometimes associated with filamentous (threadlike) algae, which are attached to the stream substrates (Anderson and Turner 1977, p. 5; Lee et al. 1980, p. 365; Minckley 1981, p. 165). Specific habitat use varies with the life stage of the fish, as well as geographic location. As noted below, researchers have documented a range of flows in areas occupied by loach minnow.

Water Depth and Flow Velocities. One study found loach minnow in varying water depths by lifestage, with water depth being 15.5 cm (6.1 in) for eggs, 10.6 cm (4.2 in) for larvae, 16.8 cm (6.6 in) for juveniles, and 18.3 cm (7.2 in) for adults (Propst et al. 1988, p. 38).

Flow rate studies have been completed on the Gila River, Tularosa River, San Francisco River, Aravaipa Creek, and Deer Creek. Measured flows in habitat occupied by adult loach minnow ranged from 9.6 to 31.2 in/second (24.4 to 79.2 cm/second) (Barber and Minckley 1966, p. 321; Propst et al. 1988, pp. 32, 36–39; Propst and Bestgen 1991, p. 33; Rinne 1989, pp. 112, 116). There is geographic variation in flow velocities used by adult loach minnow. Adult loach minnow in the Gila River preferred velocities of 1.2 to 14.4 in/second (3.0 to 36.6 cm/second), while those in Aravaipa Creek preferred velocities of 15.6 to 20.4 in/second (39.6 to 51.8 cm/second). This may be due to the fact that there were considerably more areas of slow velocity available to loach minnow in the Gila River, and that there was more and larger cobble substrate in the Gila River, which creates more habitat of slower velocities for loach minnow to use (Turner and Tafanelli 1983, pp. 15–20).

Juvenile loach minnow generally occurred in areas where velocities were similar to those used by adults; however, these areas had faster velocities than those used by larvae. In the Gila, San Francisco, and Tularosa rivers, juveniles occupied areas with mean velocities ranging between 1.2 and 33.6 in/second (3.0 and 85.3 cm/second) (Propst et al. 1988, pp. 37–38; Propst and Bestgen 1991, p. 32; Rinne 1989, p. 111; Turner and Tafanelli 1983, p. 26). Larval loach minnow move from the rocks under which they spawned to areas with slower velocities than the main stream after emergence, typically remaining in areas with significantly slower velocities than juveniles and adults. Larval loach minnow in the Gila, San Francisco, and Tularosa rivers occupied areas that were shallower and significantly slower than areas where eggs were found. In the Gila, San Francisco, and Tularosa rivers, and Aravaipa Creek, larval loach minnow occupied areas with flow velocities ranging from 3.6 to 19.2 in/second (9.1 to 48.8 cm/second) (Propst et al. 1988, p. 37; Propst and Bestgen 1991, p. 32).

The use of riffle habitat has been documented in Aravaipa Creek (Barber and Minckley 1966, p. 321; Rinne 1989, pp. 113, 116; Velasco 1997, pp. 5–6; Vives and Minckley 1990, pp. 451–452), Eagle Creek (Marsh et al. 2003, p. 666), Tularosa River (Propst et al. 1984, pp. 7–12), and the Gila and San Francisco rivers (Britt 1982, pp. 1, 5, 10–12, 29; Propst and Bestgen 1991, p. 32; Propst et al. 1984, pp. 7–12; Propst et al. 1988, pp. 36–39). Loach minnow prefer shallow, swift, and turbulent riffles. However, loach minnow also occur in stream segments that contain pool, riffle, and run habitats on the Blue, upper Gila, and San Francisco rivers (AGFD 1994, pp. 1, 5–11; Bagley et al. 1995, pp. 11, 13, 16, 17, 22; J.M. Montgomery 1985, p. 21).

Substrates. Loach minnow in Aravaipa Creek occurred over a gravel-pebble substrate with materials ranging between 3 to 16 mm (0.12 to 0.63 in) in diameter and, except in the summer, were associated with the larger sizes of available substrate. The use of larger substrates was disproportionately greater than expected based on overall availability of substrate size in the stream, indicating that loach minnow have a preference for the larger substrate and tend to use these substrate areas rather than areas with smaller substrate (Rinne 1989, pp. 112–114). For portions of the upper Gila River occupied by loach minnow in 1999 and 2000, substrates were characterized by gravel-pebble and cobble substrates, with 70 percent of the sites having a gravel-pebble substrate, and 14 percent of the sites having cobble substrate (Rinne 2001, p. 69).

Loach minnow in Aravaipa Creek and the Gila River appeared to prefer cobble and gravel, avoiding areas dominated by sand or finer gravel. This may be due to the fact that loach minnow maintain a relatively stationary position on the bottom of a stream in flowing water. An irregular bottom, such as that created by cobble or larger gravels, creates pockets of lower water velocities around larger rocks where loach minnow can remain stationary with less energy expenditure (Turner and Tafanelli 1983, pp. 24–25). In the Gila and San Francisco rivers, the majority of loach minnow captured occurred in the upstream portion of a riffle rather than in the central and lower depositional sections of the riffle. This is likely due to the availability of interstitial spaces in the cobble-rubble substrate, which became filled with sediment more quickly in the central and lower sections of a riffle section as suspended sediment begins to settle to the stream bottom (Propst et al. 1984, p. 12).

Loach minnow use different substrates during different life stages. Eggs occurred primarily on large gravel

to rubble, while larvae were found where substrate particles were smaller than substrates used by embryos. Juvenile fish occupy areas with substrates of larger particle size than larvae. Adults exhibited a narrower preference for substrates than did juveniles, and were most commonly associated with gravel to cobble substrates (Propst et al. 1988, pp. 36–39; Propst and Bestgen 1991, pp. 32–33).

As noted above, streams in the southwestern United States have a wide fluctuation in flows and are periodically dewatered. While portions of stream segments included in this designation may experience dry periods, they are still considered important because the loach minnow is adapted to this changing environment and will use these areas as connective corridors when they are wetted.

Flooding. In areas where substantial diversions or impoundments have been constructed, loach minnow are less likely to occur (Propst et al. 1988, pp. 63–64, Propst and Bestgen 1991, p. 37). This is in part due to habitat changes caused by the construction of the diversions, and in part due to the reduction of beneficial effects of flooding on loach minnow habitat. Flooding appears to positively affect loach minnow population dynamics by resulting in higher recruitment (reproduction and survival of young) and by decreasing the abundance of nonnative fishes (Stefferud and Rinne 1996, p. 1).

The construction of water diversions, by increasing water depth, has reduced or eliminated riffle habitat in many stream reaches. In addition, loach minnow are generally absent in stream reaches affected by impoundments. While the specific factors responsible for this is not known, it is likely related to modification of thermal regimes, habitat, food base, or discharge patterns (Propst et al. 1988, p. 64; Minckley 1973, pp. 1–11).

Flooding also cleans, rearranges, and rehabilitates important riffle habitat (Propst et al. 1988, pp. 63–64). Flooding allows for the scouring of sand and gravel in riffle areas, which reduces the degree of embeddedness of cobble and boulder substrates (Britt 1982, p. 45). Excessive sediment in the bedload, or that sediment that moves by sliding or rolling along the bed of the stream (Leopold et al. 1992, p. 180) is typically deposited at the downstream undersurfaces of cobble and boulder substrate components where flow velocities are lowest, and can result in a higher degree of embeddedness (Rinne 2001, p. 69). Following flooding, cavities created under cobbles by scouring action of the flood waters provides enhanced spawning habitat for loach minnow.

Studies on the Gila, Tularosa, and San Francisco rivers found that flooding is primarily a positive influence on native fish, and apparently had a positive influence on the relative abundance of loach minnow (Britt 1982, p. 45). Rather than following a typical pattern of winter mortality and population decline, high levels of loach minnow recruitment occurred after the flood, and loach minnow relative abundance remained high through the next spring. Flooding enhanced and enlarged loach minnow habitat, resulting in a greater survivorship of individuals through winter and spring (Propst et al. 1988, p. 51). Similar results were observed on the Gila and San Francisco rivers following flooding in 1978 (Britt 1982, p. 45).

Natural flooding may also reduce the negative impacts of nonnative fish species on loach minnow. During significant floods, nonnative species introduced into western streams were either displaced or destroyed, while native species were able to maintain their position in or adjacent to channel habitats, persist in micro refuges or recolonize should they be displaced (Britt 1982, p. 46; Minckley and Meffe 1987, p. 97).

Stream Gradient. In addition to the availability of riffle habitat, gradient may influence the distribution and abundance of loach minnow. In studies of the San Francisco River, Gila River, Aravaipa Creek, and the Blue River, loach minnow occurred in stream reaches where the gradient was generally low, ranging from 0.3 to 2.2 percent (Rinne 1989, p. 109; Rinne 2001, p. 69).

Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

Nonnative aquatic species. As noted under the discussion of nonnative fish species in the spikedace primary constituent elements section above, nonnative aquatic species have been introduced for a variety of reasons, resulting in interference or exploitive competition. Interference competition, such as predation, may result from interactions between loach minnow and nonnative channel and flathead catfish. Omnivorous channel catfish of all sizes move into riffles to feed, preying on the same animals most important to the loach minnow diet. Juvenile flathead catfish also feed in riffles in darkness. Flathead catfish are piscivorous, even when small. Loach minnow remains were found in the digestive tracts of channel catfish (Propst et al. 1988, p. 64; Propst and Bestgen 1991, p. 36).

Exploitive competition, or competition for actual resources (Schoener 1983, p. 257), may occur between loach minnow and red shiner, as red shiner is the nonnative fish species most likely to occur in stream habitats occupied by small loach minnow. Red shiners occur in all places known to be formerly occupied by loach minnow, and are absent or rare in places where loach minnow persists. Because of this, red shiner has often been implicated in the decline of loach minnow, as well as other native fishes. Loach minnow habitat is markedly different from that of the red shiner, so interaction between the two species was unlikely to cause shifts in habitat use by loach minnow (Marsh et al. 1989, p. 39). Studies indicate that, instead, red shiner move into voids left when native fishes such as loach minnow are extirpated due to habitat degradation in the area (Bestgen and Propst 1987, p. 209). This may preclude occupancy of this area by loach minnow in the future, should habitat conditions improve.

Prior to 1960, the Glenwood-Pleasanton reach of the Gila River supported a native fish community of eight different species. Post-1960, four of these species became uncommon, and ultimately three of them were extirpated. In studies completed between 1961 and 1980, it was determined that loach minnow was less common than it had been, while diversity of the nonnative fish community had increased in comparison to the pre-1960 period. Following 1980, red shiner, fathead minnow, and channel catfish were all regularly collected. Drought and diversions for irrigation resulted in a decline in habitat quality, with canyon reaches retaining habitat components for native species. However, establishment of nonnative fishes in the canyon reaches then reduced the utility of these areas for native species (Propst et al. 1988, pp. 51–56).

The discussion on spikedace includes information on other nonnative aquatic species such as Asian tapeworm, anchor worm, and Ich, which are also detrimental to loach minnow.

Food

Food Items. Loach minnow are opportunistic, benthic insectivores that obtain their food from riffle-dwelling larval mayflies, black flies, and true flies, as well as from larvae of other aquatic insect groups such as caddisflies and stoneflies. Loach minnow in the Gila, Tularosa, and San Francisco rivers

consumed primarily true flies and mayflies, with mayfly nymphs being an important food item throughout the year. Mayfly nymphs constituted the most important food item throughout the year for adults studied on the Gila and San Francisco Rivers, while true fly larvae were most common in the winter months (Propst et al. 1988, p. 27; Propst and Bestgen 1991, p. 35). In Aravaipa Creek, loach minnow consumed 11 different prey items, including mayflies, stoneflies, caddisflies, and true flies. Mayflies constituted the largest percentage of their diet during this study except in January, when true flies made up 54.3 percent of the total food volume (Schreiber 1978, pp. 40–41).

Loach minnow consume different prey items during their various life stages. Both larvae and juveniles primarily consumed true flies, which constituted approximately 7 percent of their food items in one year, and 49 percent the following year. Mayfly nymphs were also an important dietary element at 14 percent and 31 percent during a one-year study. Few other aquatic macroinvertebrates were consumed (Propst et al. 1988, p. 27). In a second study, true fly larvae and mayfly naiads constituted the primary food of larval and juvenile loach minnow (Propst and Bestgen 1991, p. 35).

The availability of pool and run habitats affects availability of prey species. While most of the food items of loach minnow are riffle species, two are not, including true fly larvae and mayfly nymphs. Mayfly nymphs, at times, made up 17 percent of the total food volume of loach minnow in a study at Aravaipa Creek (Schreiber 1978, pp. 40–41). The presence of a variety of habitat types is therefore important to the persistence of loach minnow in a stream, even while they are typically associated with riffles.

Water Quality

Pollutants. Water with no or only minimal pollutant levels is important for the conservation of loach minnow. As with spikedace, loach minnow occur in areas where mining, agriculture, livestock operations, and road construction are prevalent activities. Various pollutants are associated with these types of activities. For loach minnow, waters should have low levels of pollutants, such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels (Baker 2005). In addition, for freshwater fish, dissolved oxygen should generally be greater than 3.5 cc/l (Bond 1979, p. 215). Below this, some stress may occur.

Fish kills associated with previous mining accidents are detailed under the spikedace PCEs above. These incidents occurred within the historical range of the loach minnow.

Temperatures. Loach minnow have a fairly narrow range in temperature tolerance, and their upstream distributional limits in some areas may be linked to low winter stream temperature (Propst et al. 1988, p. 62). Suitable temperature regimes appear to be fairly consistent across geographic areas. Studies of Aravaipa Creek, East Fork White River, the San Francisco River, and the Gila River determined that loach minnow were present in areas with water temperatures in the range of 48.2 to 71.6 °F (9 to 22 °C) (Britt 1982, p. 31; Leon 1989, p. 1; Propst et al. 1988, p. 62; Propst and Bestgen 1991, p. 33; Vives and Minckley 1990, p. 451).

Recent studies by the University of Arizona focused on temperature tolerances of loach minnow. In the study, fish were acclimated to a given temperature, and then temperatures were increased by 1 °C (33.8 °F) per day until test temperatures were reached. The study determined that no loach minnow survived 30 days at 32 °C (89.6 °F), and that 50 percent mortality occurred after 30 days at 30.6 °C (87.1 °F). In addition, growth rate was slowed at 28 °C and 30 °C (82.4 and 86.0 °F) in comparison to growth at 25 °C (77 °F), indicating that loach minnow were stressed at sub-lethal temperatures. Survival of fish in the fluctuating temperature trials of the study likely indicates that exposure to higher temperatures for short periods during a day would be less stressful to loach minnow. The study concludes that temperature tolerance in the wild may be lower due to the influence of additional stressors, including disease, predation, competition, or poor water quality. The study concludes that 100 percent survival of loach minnow at 28 °C (82.4 °F) suggests that little juvenile or adult mortality would occur due to thermal stress if peak water temperatures remain at or below that level (Bonar et al. 2005, pp. 6–8, 28, 33).

Reproduction and Rearing of Offspring

Habitat conditions needed for reproduction and rearing of offspring include appropriate flow velocities, substrates, sediment levels, and riffle availability. Loach minnow place eggs in areas with mean velocities ranging between 2.4 to 15.6 in/second (3.0 to 39.6 cm/second) in the Gila, San Francisco, West Fork, Middle Fork, and East Fork Gila rivers (Britt 1982, pp. 29–30; Propst et al. 1988, p. 25; Propst and Bestgen 1991, p. 34). Fungal infections developed on egg masses found in slow-velocity waters of less than 2.4 in/second (6.2 cm/second) (Propst et al. 1988, p. 25; Propst and Bestgen 1991, p. 34). Once hatched, areas of slower flows appear important to larval loach minnow as they have been found in slower-velocity stream margins (Propst et al. 1988, pp. 37–38).

Substrate type is important to spawning as well. While loach minnow spawning occurs in the same riffle habitat that adults occupy, it is the substrate that determines its suitability for spawning. Eggs are deposited on the undersurface of rocks or cobbles. Rocks are generally flattened, have smooth surfaces, and are angular. Rocks which have eggs attached are generally embedded on their upstream side in the substrate. Eggs placed under rocks in the Gila River, San Francisco River, and Aravaipa Creek were placed on the underside of rocks in nest cavities formed by rocks of varying sizes (Britt 1982, pp. 29, 31; Propst et al. 1988, p. 21; Vives and Minckley 1990, pp. 451–452).

Loach minnow spawning is the life history stage most affected by sediment or fines (Rinne 2001, p. 69). Because deposition of eggs occurs on the downstream undersurfaces of cobble and boulder substrate components, excessive fines in the bedload of a system can fill in the areas where eggs would otherwise be deposited, especially in areas of slower velocities.

Primary Constituent Elements for the Loach Minnow

Pursuant to our regulations, we are required to identify the known physical and biological features (primary constituent elements) essential to the conservation of the loach minnow. All stream complexes designated as critical habitat for the loach minnow are considered occupied, within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the primary constituent elements essential to the conservation of the loach minnow are:

1. Permanent, flowing water with no or minimal pollutant levels, including:

a. Living areas for adult loach minnow with moderate to swift flow velocities between 9.0 to 32.0 in/second (24 to 80 cm/second) in shallow water between approximately 1.0 to 30 inches

(3 cm to 75 cm) in depth, with gravel, cobble, and rubble substrates;

b. Living areas for juvenile loach minnow with moderate to swift flow velocities between 1.0 and 34 in/second (3.0 and 85.0 cm/second) in shallow water between approximately 1.0 to 30 inches (3 cm to 75 cm) in depth with sand, gravel, cobble, and rubble substrates;

c. Living areas for larval loach minnow with slow to moderate velocities between 3.0 and 20.0 in/second (9.0 to 50.0 cm/second) in shallow water with sand, gravel, and cobble substrates;

d. Spawning areas with slow to swift flow velocities in shallow water where cobble and rubble and the spaces between them are not filled in by fine dirt or sand; and

e. Water with dissolved oxygen levels greater than 3.5 cc/l and no or minimal pollutant levels for pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels.

2. Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

3. Streams that have:

a. Low gradients of less than approximately 2.5 percent;

b. Water temperatures in the approximate range of 35 to 82 °F (1.7 to 27.8 °C) (with additional natural daily and seasonal variation);

c. Pool, riffle, run, and backwater components; and

d. An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies.

4. Habitat devoid of nonnative aquatic species or habitat in which nonnative aquatic species are at levels that allow persistence of loach minnow.

5. Areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the features essential to the conservation of the spikedace and loach minnow. In designating critical habitat for the spikedace and loach minnow, we solicited information from knowledgeable biologists and reviewed recommendations contained in State wildlife resource reports. We also reviewed the available literature pertaining to habitat requirements, historical localities, and current localities of the two species. We used data in reports submitted during section 7 consultations, research published in peer-reviewed articles and presented in academic theses and agency reports, and regional GIS data layer coverages.

We have also reviewed historical and current occurrence data, information pertaining to habitat requirements for these species, scientific information on the biology and ecology of the two species, general conservation biology principles, and scientific information cited in the Recovery Plans for these two species. Of particular importance, we reviewed databases, published literature, and field notes to determine the historical and current occurrence data for the two species. The SONFishes Database (ASU 2002) details occurrence records from the 1800s through 1999. The Heritage Database Management System (HDMS) (AGFD 2004) contains information for Arizona with some overlap of SONFishes records, as well as records from 1999 through 2004. Agency and researcher field notes and published literature contain additional information on completed surveys and species detections.

Criteria for Defining Critical Habitat

We are designating critical habitat on lands within the geographical range occupied at the time of listing and currently occupied by either, or in some cases both, the spikedace and loach minnow. We consider an area to be occupied by the spikedace or loach minnow if we have records to support occupancy within the last 10 years, or where the stream segment is directly connected to a segment with occupancy records from within the last 10 years (this is described within each unit description below). The three connected areas (see Table 1 above) included in the designation are within the historical range of the species, contain one or more of the PCEs required by spikedace or loach minnow, have been occupied in the past, and are directly connected to a stream segment with records of occupancy from 2004 or 2005 (see Table 1 above). For the following reasons we believe that these areas are occupied for the purposes of this critical habitat designation: (1) The areas are directly connected to stream segments with recent occupancy records (2004 and 2005); (2) the stream segments are connected and the fish can move between them; (3) surveys have been infrequent or inconsistent and spikedace and loach minnow can be difficult to detect in surveys; and (4) we have other streams in which the species were not detected for long periods before being detected again [e.g., Eagle Creek, where there was a 44 year gap between loach minnow detections (see Marsh et al. 2003, p. 666)]. We believe a period of 10 years is reasonable to determine occupancy based on the fact that both species are difficult to detect in surveys, surveys have been infrequent or inconsistent because many of the areas where they occur are remote, and as noted above, we have areas where these species were not detected for long periods of time (44 years) and then detected again. The life expectancy of spikedace and loach minnow is 2 to 3 years. A period of 10 years would represent a time period that provides for three to four generations of spikedace and loach minnow.

We divided the overall historical range into five river complexes, and each critical habitat stream segment was derived from within these larger complexes. We believe this is a reasonable approach because populations in mainstem tributaries may access a wider geographic area by moving into smaller tributaries, while populations in tributaries are afforded the ability to disperse to other tributaries via the mainstem river within that complex. Overall, the complexes included herein provide coverage throughout the historical range of the species, with exceptions for areas that were excluded for specific reasons, as detailed below (see ''Exclusions under Section 4(b)(2) of the Act'' section below). The critical habitat designation constitutes our best assessment of areas that contain sufficient features (PCEs) essential to the conservation of spikedace and loach minnow and that require special management or protection.

We are designating critical habitat in areas that we have determined to be occupied at the time of listing, and that

contain sufficient primary constituent elements to support life history functions essential for the conservation of the species. Lands were included in the designation based on sufficient PCEs being present to support the life processes of the species. Some lands contain all PCEs and support multiple life processes. Some lands contain only a portion of the PCEs necessary to support the particular use of that habitat. In determining whether an area contains sufficient PCEs, the Service looked at various databases and survey records to determine occupancy, as well as habitat descriptions at various locations. We relied on information provided in survey reports and research documents to describe conditions at various locations. This information was then synthesized to develop the critical habitat designation.

When determining final critical habitat map boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack any PCEs for the spikedace and loach minnow. Any such structures and the land under them inadvertently left inside critical habitat boundaries of this final rule are excluded by text and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Lateral Extent

The areas designated as critical habitat are designed to provide sufficient riverine and associated floodplain area for breeding, non-breeding, and dispersing adult spikedace and loach minnow, as well as for the habitat needs of juvenile and larval stages of these fishes. In general, the primary constituent elements of critical habitat for spikedace and loach minnow include the riverine ecosystem formed by the wetted channel and the adjacent floodplains within 300 lateral feet on either side of bankfull stage, except where bounded by canyon walls. Areas within the lateral extent also contribute to PCEs 1 and 2 (water quality) and contain PCEs 3 (food source) and 5 (provide areas where the fish may move through when wetted). Spikedace and loach minnow use the riverine ecosystem for feeding, sheltering, and cover while breeding and migrating. This designation takes into account the naturally dynamic nature of riverine systems and floodplains (including riparian and adjacent upland areas) that are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (i.e., wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson et al. 1981, pp. 2–61, 2–69, 2–72, 2–75, 2–84 to 2–85). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian and adjacent upland areas help ensure water courses maintain the habitat important for aquatic species (e.g., see U.S. Forest Service 1979, pp. 18, 109, 158, 264, 285, 345; Middle Rio Grande Biological Interagency Team 1993, pp. 64, 89, 94), including the spikedace and loach minnow. Habitat quality within the mainstem river channels in the historical range of the spikedace and loach minnow is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (e.g., substrate, water quality, and water quantity) in these reaches. We have determined that a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important for maintaining the PCEs necessary for long-term conservation of the spikedace and loach minnow.

The lateral extent (width) of riparian corridors fluctuates considerably between a stream's headwaters and its mouth. The appropriate width for riparian buffer strips has been the subject of several studies (Castelle et al. 1994). Most Federal and State agencies generally consider a zone 23–46 m (75–150 ft) wide on each side of a stream to be adequate (NRCS 1998; Moring *et al.* 1993; Lynch *et al.* 1985), although buffer widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, riparian buffer zones are primarily intended to reduce (i.e., buffer) detrimental impacts to the stream from sources outside the river channel. Consequently, while a riparian corridor 23–46 m (75–150 ft) in width may function adequately as a buffer, it is likely inadequate to preserve the natural processes that provide spikedace and loach minnow primary constituent elements.

The lateral extent of streams was set at 300 ft (91.4 m) to either side of bankfull stage to accommodate stream meandering and high flows, and in order to ensure that this designation contained the features essential to the conservation of the species. Bankfull stage is defined as the upper level of the range of channel-forming flows which transport the bulk of the available sediment over time. Bankfull stage is generally considered to be that level of stream discharge reached just before flows spill out onto the adjacent floodplain. The discharge that occurs at bankfull stage, in combination with the range of flows that occur over a length of time, govern the shape and size of the river channel (Rosgen 1996, pp. 2–2 to 2–4; Leopold 1997, pp. 62–63, 66). The use of bankfull stage and 300 ft (91.4 m) on either side recognizes the naturally dynamic nature of riverine systems, recognizes that floodplains are an integral part of the stream ecosystem, and contains the area and associated features essential to the conservation of the species. A relatively intact floodplain, along with the periodic flooding in a relatively natural pattern, is an important element in the conservation of spikedace and loach minnow.

We determined the 300-foot lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Army Corps of Engineers for the areas we are proposing to designate. We suspect this is related to the remoteness of many of the stream reaches where these species occur. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three biological reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (i.e., the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide important nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as

providing a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' final notice concerning Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818–12899).

Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We conclude that a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important in maintaining the stream conditions necessary for long-term survival and recovery of the spikedace and loach minnow.

Conservation of the river channel alone is not sufficient to ensure the survival and recovery of the spikedace and loach minnow. For the reasons discussed above, we believe the riparian corridors adjacent to the river channel provide an important function within the areas designated as critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing, contain the primary constituent elements and may require special management considerations or protection. We believe each area included in this final designation requires special management and protections as described in our unit descriptions and Table 1.

Special management considerations for each area will depend on the threats to the spikedace and/or loach minnow in that critical habitat area. For example, threats requiring special management include nonnative fish species and the continued spread of nonnative fishes into spikedace or loach minnow habitat. Other threats requiring special management include threat of fire, retardant application during the fire, and excessive ash and sediment following the fire. On-going improper livestock grazing can be a threat to spikedace and loach minnow and their habitats. Poor water quality and adequate quantities of water for all life stages of spikedace and loach minnow threaten these fish and may require special management actions or protections. The construction of water diversions, by increasing water depth, has reduced or eliminated riffle habitat in many stream reaches. In addition, loach minnow are generally absent in stream reaches affected by impoundments. While the specific factor responsible for this is not known, it is likely related to modification of thermal regimes, habitat, food base, or discharge patterns. We have included below in our description of each of the critical habitat areas for the spikedace and loach minnow a description of the threats occurring in that area requiring special management or protections.

When determining critical habitat boundaries, we made every effort to avoid the designation of developed areas such as buildings, paved areas, boat ramps and other structures that lack PCEs for spikedace and loach minnow. Any such structures do not contain the PCEs and are not considered part of the critical habitat designation. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or PCEs in adjacent critical habitat.

Critical Habitat Designation

Below are tables and descriptions of the critical habitat segments, including discussion of excluded and exempted areas within each segment. For each stream reach, the upstream and downstream boundaries are described. Additionally, critical habitat includes the stream channels within the identified stream reaches and areas within these reaches and, as described above, the area of bankfull width plus 300 lateral feet on either side of bankfull width, except when the floodplain is narrow and bounded by canyon walls. This 300-foot width defines the lateral extent of each area of critical habitat that contains sufficient PCEs (3 and 5) to provide for one or more of the life history functions of the spikedace and loach minnow.

The critical habitat designation for both spikedace and loach minnow includes five complexes totaling approximately 522.2 mi (840.4 km) of stream reaches (see Tables 1 and 2). The spikedace and loach minnow critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, that contain the primary constituent elements and may require special management, and those additional areas that were not occupied at the time of listing but are currently occupied and contain the features essential to the conservation of the species. Unless otherwise indicated, the following areas identified in Table 1 and in the unit descriptions below, are designated as critical habitat for both spikedace and loach minnow (see the ''Regulation Promulgation'' section of this rule below for exact descriptions and distances of boundaries). The designation includes portions of 8 streams for spikedace and 21 streams for loach minnow; however, individual streams are not isolated, but are grouped with others to form areas or ''complexes.''

Table 2 below provides approximate area (mi/km) determined to meet the definition of critical habitat for the spikedace and loach minnow by State.

TABLE 2.—APPROXIMATE CRITICAL HABITAT IN STREAM MILES (MI) AND KILOMETERS (KM) BY STATE AND LANDOWNER

Landowner	Arizona mi (km)	New Mexico mi (km)	Total mi (km)
Federal	170.4 (274.2)	167.7 (269.9)	338.1 (544.1)
State	8.0 (12.9)	1.3 (2.1)	9.3 (15)
Tribal	2.1 (3.4)	0 (0)	2.1 (3.4)
Private	90.2 (145.1)	82.5 (132.8)	172.7 (277.9)
Total	270.7 (435.6)	251.5 (404.8)	522.2 (840.4)

TABLE 3.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE SPIKEDACE AND LOACH MINNOW AND THE AREAS EXCLUDED FROM THE FINAL CRITICAL HABITAT DESIGNATION

[ac (ha)/mi (km)]

State or geographic area	Area meeting the definition of critical habitat (mi/km)	Area excluded from the final critical habitat designation (mi/km)
Arizona	373.7 (601.5)	103.1 (165.9)
New Mexico	258.8 (416.4)	7.3 (11.7)
Total	632.5 (1017.9)	110.3 (177.5)

The approximate area encompassed within each critical habitat unit is shown in Table 4.

TABLE 4.—CRITICAL HABITAT UNITS DESIGNATED FOR THE SPIKEDACE AND LOACH MINNOW

[Area estimates reflect all land within critical habitat complexes]

Critical habitat unit	Mi	Km
1. Verde River	43.0	69.2
2. Black River	18.1	29.1
3. Lower San Pedro/Gila River/Aravaipa Creek	85.5	137.5
4. Gila Box/San Francisco River	235.0	378.2
5. Upper Gila River	140.6	226.3
Total	522.2	840.4

Complex 1—Verde River Complex—Yavapai County, Arizona

Spikedace have been detected in the Verde River Complex since 1890. The Verde River was known to be occupied by spikedace at the time of listing, and is still considered to be occupied based on surveys documenting spikedace presence as recently as 1999. This complex was also historically occupied by loach minnow, with records from 1890 and 1938 (ASU 2002, Brouder 2002, AGFD 2004). At this time, the tributary streams of the Verde River are believed to be unoccupied by both species and are not being included as critical habitat. The Verde River Complex is unusual in that a relatively stable thermal and hydrologic regime is found in the upper river and in Fossil Creek, one of the tributaries to the Verde River. Also, spikedace in the Verde River are genetically distinct from all other spikedace populations (Tibbets 1993, pp. iii-iv, 34–35; Anderson and Hendrickson 1994, p. 154). The Verde River contains one or more of the primary constituent elements, including shear zones, sheet flow, and eddies, and an appropriate prey base. In addition, the lateral extent of each segment within this complex of critical habitat contains sufficient PCEs (3 and 5) to provide for one or more of the life history functions of the spikedace and loach minnow. The continuing presence of spikedace and the existence of features that are essential to the conservation of the species create a high potential for restoration of loach minnow to the Verde River system. Threats to this critical habitat area requiring special management and protections include water diversions, improper livestock grazing, and nonnative fish species (see Table 1 above).

The landownership of this complex consists of large blocks of U.S. Forest Service lands in the upper and lower reaches, with significant areas of private ownership in the Verde Valley. There are also lands belonging to Arizona State Parks, Yavapai Apache Tribe, and the AGFD. The Verde River divides the west and east halves of the Prescott National Forest, and passes by or through the towns of Camp Verde, Middle Verde, Bridgeport, Cottonwood, and Clarkdale.

Verde River Complex—Spikedace Only—43 mi (69.2 km) of river extending from the Prescott and Coconino National Forest boundary with private lands upstream to Sullivan Dam at Township 17 North, Range 2 West, section 15. Sullivan Dam is at the upstream limit of perennial flow in the mainstem of the Verde River. Perennial flow results from a series of river-channel springs and from Granite Creek. The Verde River contains features essential to the conservation of the spikedace between its headwaters and Fossil Creek. These portions of the Verde River provide a relatively stable thermal and hydrologic regime suitable for spikedace. Below Fossil Creek, the Verde River has a larger flow and is thought to offer little suitable habitat (i.e., does not contain sufficient PCEs) for spikedace or loach minnow. The Verde River below Fossil Creek is within the historical range for both species, and comments on previous critical habitat designations from the U.S. Forest Service indicated this stretch of the river may offer substantial value for spikedace and loach minnow recovery. We will continue to seek further information regarding the Verde River and its role in conservation for these two species and may consider designation of the Verde River below Fossil Creek in future potential revisions of critical habitat. At this time, however, we are excluding all land south of the Coconino and Prescott National Forest boundaries at the upper end of the Verde Valley due to disproportionate economic concerns (see Exclusions under Section 4(b)(2) below).

Complex 2—Black River Complex—Apache and Greenlee Counties, Arizona

The Salt River Sub-basin represents a significant portion of loach minnow historical range; however, loach minnow have been extirpated from all but a small portion of the Black and White rivers. The Black River Complex is considered important because it is the only remaining population of loach minnow on public lands in the Salt River Sub-basin.

We are designating streams within this complex as critical habitat for loach minnow only. At this time, spikedace are not known to historically occupy areas at this elevation; however, the data on maximum elevation for spikedace are not definitive and if information becomes available that differs from that currently available, the Black River Complex may be reevaluated for spikedace critical habitat designation in a future revision. Portions of the sub-basin are unsuitable, either because of topography or because of the presence of reservoirs, stream channel alteration by humans, or overwhelming nonnative fish populations. However, other areas within the sub-basin remain suitable. Complex 2 was not known to be occupied at listing, with first detections of loach minnow occurring in 1996. It is currently occupied by loach minnow

(Bagley et al. 1995, multiple surveys; Lopez 2000, p. 1; ASU 2002; AGFD 2004). Because the range of loach minnow has been severely reduced, and only a few streams remain occupied, the Black River Complex is considered essential to the loach minnow. In addition, Complex 2 supports one or more of the PCEs for loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). In addition, the lateral extent of each segment within this complex of critical habitat contains sufficient PCEs (3 and 5) to provide for one or more of the life history functions of the spikedace and loach minnow. Threats in this complex requiring special management or protections include improper livestock grazing, nonnative fish, recreation, and sedimentation including that from a recent fire that destroyed vegetation (see Table 1). The ownership of this complex is predominantly U.S. Forest Service, with a few small areas of private land. All streams within the complex are within the boundaries of the Apache-Sitgreaves National Forest and include lands of the White Mountain Apache Tribe.

(1) East Fork Black River—Loach Minnow Only—12.2 mi (19.7 km) of river extending from the confluence with the West Fork Black River upstream to the confluence with an unnamed tributary approximately 0.51 mi (0.82 km) downstream of the Boneyard Creek confluence. This area is considered occupied based on records from 1996, it is connected to the North Fork East Fork Black River with documented loach minnow records from 2004, and contains one or more of the primary constituent elements including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs).

(2) North Fork East Fork Black River—Loach Minnow Only—4.4 mi (7.1 km) of river extending from the confluence with the East Fork Black River upstream to the confluence with an unnamed tributary. This area is occupied by loach minnow based on surveys documenting presence of loach minnow as recently as 2004. Above the unnamed tributary, the river has finer substrate and lacks riffle habitat, making it unsuitable for loach minnow.

(3) Boneyard Creek—Loach Minnow Only—1.4 mi (2.3 km) of creek extending from the confluence with the East Fork Black River upstream to the confluence with an unnamed tributary. Boneyard Creek contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). This area is considered to be occupied based on records from 1996; it is also connected to the North Fork East Fork Black River which has documented loach minnow records from 2004. This area represents part of the only occupied complex in the Salt River basin.

(4) East Fork White River—Loach Minnow Only—12.5 mi (20.1 km) of the East Fork White River extending from the confluence with the North Fork White River and the East Fork White River at Township 5 North, Range 22 East, section 35 upstream to Township 5 North, Range 23 East, southeast quarter of section 13. This area was occupied by loach minnow at the time of listing and is reported to be currently occupied by the White Mountain Apache Tribe. This segment of the East Fork White River contains sufficient features to support one or more of the life history functions of the loach minnow that may include appropriate gradient, temperature, habitat types (pool, riffle, run, etc.), and low levels of non-natives. Threats in this segment requiring special management or protections include water diversions and recreation. The entirety of this reach is located on lands belonging to the White Mountain Apache Tribe. A management plan for loach minnow has been in place on these lands since 2000. On the basis of this plan and our partnership with the White Mountain Apache Tribe, we are excluding this area from final critical habitat pursuant to section 4(b)(2) of the Act (see ''Relationship of Critical Habitat to Tribal Lands'' section below for additional information).

Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek Complex—Pinal and Graham Counties, Arizona

The portions of this complex designated as critical habitat are within the geographical range occupied by both spikedace and loach minnow at their listing and currently. Spikedace and loach minnow have been present within this complex since 1943, with occupancy confirmed most recently in 2006 (ASU 2002, AGFD 2004, Rienthal 2006, p. 2–3). The portions of the Gila and San Pedro rivers included within this complex were not known to be occupied at listing, with the first detection on the Gila River occurring in 1991 (Jakle 1992, p. 6). However, this area is connected via the San Pedro River to Aravaipa Creek, which contains one of the largest remaining populations of spikedace, and is therefore considered to be occupied for the purposes of critical habitat. Because the distribution of spikedace is reduced to populations in the Verde River, Aravaipa Creek, and the Gila River in New Mexico, all remaining populations are considered important to the species. This complex contains one or more of the PCEs for both species including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). In addition, the lateral extent of each segment within this complex of critical habitat contains sufficient PCEs (3 and 5) to provide for one or more of the life history functions of the spikedace and loach minnow. Ongoing actions requiring special management or protections in this area include wildfire, some recreational pressure, low nonnative pressures, water diversions, and contaminants issues. Aravaipa Creek supports the largest remaining spikedace and loach minnow populations in Arizona. Threats in this complex requiring special management or protections include water diversions, improper livestock grazing, nonnative fish, recreation, and mining (see Table 1). This area includes extensive BLM land as well as extensive private land, some State of Arizona lands, and a small area of allotted land, used by the San Carlos Apache Tribe. The lower portions of the Gila River are Bureau of Reclamation lands.

(1) Gila River—Spikedace Only—39.0 mi (62.8 km) of river extending from the Ashurst-Hayden Dam upstream to the confluence with the San Pedro River. Spikedace were located in the Gila River in 1991 (Jakle 1992, p. 6), and the Gila River is connected with Aravaipa Creek, which supports the largest remaining spikedace population. Those portions of the Gila River designated as critical habitat contain one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., glides, runs, eddies). Above the confluence with the San Pedro River, flow in the Gila River is highly regulated by the Coolidge Dam and does not contain the features essential to the conservation of either species. Below the confluence, the input of the San Pedro provides a sufficiently unregulated hydrograph, which is a feature essential to the conservation of the spikedace. Threats in this area requiring special management or protections include water diversions, improper livestock grazing, and nonnative fish species. This river is part of the complex that contains the largest remaining population of spikedace and loach

minnow and contains the features essential to the conservation of the species.

(2) Lower San Pedro River—Spikedace Only—13.4 mi (21.5 km) of river extending from the confluence with the Gila River upstream to the confluence with Aravaipa Creek. This area was occupied at the time of listing and is considered to be occupied as it is directly connected with Aravaipa Creek, which supports the largest remaining spikedace population. This portion of the San Pedro River contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., glides, runs, eddies). Existing flow in the river comes from surface and subsurface contributions from Aravaipa Creek. Threats in this area requiring special management or protections include water diversions, nonnative fish, improper livestock grazing, and mining. This river is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

(3) Aravaipa Creek—28.1 mi (45.3 km) of creek extending from the confluence with the San Pedro River upstream to the confluence with Stowe Gulch, which is where the upstream limit of sufficient perennial flow ends for either species. Aravaipa Creek was occupied by both spikedace and loach minnow at the time of listing and continues to support a substantial population of both species (Rienthal 2006, p. 1–2). Aravaipa Creek contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., runs, riffles, glides, eddies). Threats in this area requiring special management or protections include water diversions, nonnative fish, and recreational pressures (see Table 1).

(4) Turkey Creek—Loach Minnow Only—2.7 mi (4.3 km) of creek extending from the confluence with Aravaipa Creek upstream to the confluence with Oak Grove Canyon. This creek was occupied at the time of listing and is currently occupied by loach minnow (Rienthal 2006, p. 2–3). Turkey Creek contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections are generally the same as for Aravaipa Creek, and include water diversions, nonnative fish, and recreational pressure (see Table 1). This creek is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

(5) Deer Creek—Loach Minnow Only—2.3 mi (3.6 km) of creek extending from the confluence with Aravaipa Creek upstream to the boundary of the Aravaipa Wilderness. This stream was occupied at the time of listing and is currently occupied by loach minnow. Deer Creek contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). The threats to loach minnow in this area are similar to those for Aravaipa Creek, including water diversions, nonnative fish, and recreation. This creek is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

Complex 4—San Francisco and Blue Rivers Complex—Graham and Greenlee Counties, Arizona and Catron County, New Mexico

The streams in this complex are within the geographical range occupied by the loach minnow and the spikedace. The Blue River system and adjacent portions of the San Francisco River constitute the longest stretch of occupied loach minnow habitat unbroken by large areas of unsuitable habitat. Loach minnow have been present in this complex since 1840 up to the present, including at its listing (Miller 1998, pp. 4–5; ASU 2002; AGFD 2004; Carter 2005, pp. 1–9; Propst 2005, p. 6; Propst 2006, p. 2). Within this complex, Eagle Creek was known to be occupied by spikedace at its listing (ASU 2002; Marsh et al. 2003, pp. 666–668; AGFD 2004), while Frieborn, Negrito, and Pace creeks were not known to be occupied at the time of listing. For the areas not known to be occupied at the time of listing, each of these areas is currently occupied by loach minnow, supports one or more of the PCEs, and is connected to a stream that is also currently occupied. Because the distribution of loach minnow has been severely reduced, these creeks are considered essential to the species. Streams in this complex contain one or more of the PCEs for both species including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). In addition, the lateral extent of each segment within this complex of critical habitat contains sufficient PCEs (3 and 5) to provide for one or more of the life history functions of the spikedace and loach minnow. Threats in this complex requiring special management are described in the individual stream reaches below. This complex contains extensive U.S. Forest Service land, some BLM land, and scattered private, State of Arizona, and NMDGF lands.

(1) Eagle Creek—Loach Minnow Only—44.8 mi (71.9 km) of creek extending from the Phelps-Dodge Diversion Dam upstream to the confluence of Dry Prong and East Eagle creeks, including lands of the San Carlos Apache Reservation and the Phelps Dodge Corporation. Eagle Creek was occupied by spikedace and loach minnow at the time of listing. The most current records of occupancy in Eagle Creek are from 1997 for loach minnow and 1989 for spikedace. Eagle Creek contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats within this area that require special management or protections include water diversions, improper livestock grazing, nonnative fish, and mining (see Table 1).

A section of Eagle Creek approximately 17.2 mi (27.7 km) long occurs on the San Carlos Apache Reservation. We have received a management plan from the San Carlos Apache Tribe addressing native fishes. On the basis of this plan and our partnership with the San Carlos Apache Tribe, we are excluding this area from final critical habitat pursuant to section 4(b)(2) of the Act (see ''Relationship of Critical Habitat to Tribal Lands'' section below for additional information). An additional 9.9 mi (15.7 km) are owned by the Phelps Dodge Corporation. We received a management plan from Phelps Dodge addressing management for spikedace and loach minnow. On the basis of this plan, we are excluding their lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act (see ''Exclusions under Section 4(b)(2) of the Act'' for additional information).

(2) San Francisco River—Loach Minnow Only—126.5 mi (203.5 km) of river extending from the confluence with the Gila River upstream to the mouth of The Box, a canyon above the town of Reserve. Loach minnow occupied the San Francisco River at the time of listing and occupy it presently,

with occupancy verified in 2005. The San Francisco River contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include water diversions, improper livestock grazing, and nonnative fish species (see Table 1).

(3) Tularosa River—Loach Minnow Only—18.6 mi (30.0 km) of river extending from the confluence with the San Francisco River upstream to the town of Cruzville. Above Cruzville, the river does not contain the features essential to the conservation of the species because of the small size of the stream and a predominance of fine substrates. This area includes one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). The Tularosa River was occupied at the time of listing and is known to be currently occupied based on records as recent as 2002. Threats to the species and its habitat in this area that require special management or protections include grazing and nonnative fish (see Table 1).

(4) Negrito Creek—Loach Minnow Only—4.2 mi (6.8 km) of creek extending from the confluence with the Tularosa River upstream to the confluence with Cerco Canyon. Above this area, the creek does not contain the features essential to the conservation of the species because of gradient and channel morphology. Negrito Creek has been occupied since listing, with the most recent record from 1998 (Service 2005). In addition, this area is directly connected to the Tularosa River, which has occupancy records as recent as 2002. Negrito Creek contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include improper livestock grazing and nonnative fish (see Table 1).

(5) Whitewater Creek—Loach Minnow Only—1.1 mi (1.8 km) of creek extending from the confluence with the San Francisco River upstream to the confluence with the Little Whitewater Creek. Upstream of this area the river does not contain the features essential to the conservation of the species because of gradient and channel changes that make the portion above Little Whitewater Creek unsuitable for loach minnow. In addition, low water temperatures likely influence the upstream distributional limits (Propst 2006, p. 2). Whitewater Creek was occupied at the time of listing, and is connected with the San Francisco River, which has documented loach minnow records as recent as 2001. This area does support one or more primary constituent elements for loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area include grazing and nonnative fish (see Table 1).

(6) Blue River—Loach Minnow Only—51.1 mi (82.2 km) of river extending from the confluence with the San Francisco River upstream to the confluence of Campbell Blue and Dry Blue creeks. The Blue River was occupied at the time of listing and continues to be occupied by loach minnow (Carter 2005, pp. 1–9). The Blue River contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Planning is underway among several State and Federal agencies for reintroduction of native fishes, including spikedace, in the Blue River, and thus the Blue River may be considered for spikedace critical habitat in future revisions of the designation. Threats in this area include water diversions, improper livestock grazing, nonnative fish, and roads (see Table 1).

(7) Campbell Blue Creek—Loach Minnow Only—8.1 mi (13.1 km) of creek extending from the confluence of Dry Blue and Campbell Blue creeks upstream to the confluence with Coleman Canyon. Areas above Coleman Canyon do not contain the features essential to the conservation of the species because the creek becomes steeper and rockier, making it unsuitable for loach minnow. Campbell Blue Creek is currently occupied (Carter 2005, pp. 1–9) and supports one or more of the velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include improper livestock grazing and nonnative fish species (see Table 1).

(8) Dry Blue Creek—Loach Minnow Only—3.0 mi (4.8 km) of creek extending from the confluence with Campbell Blue Creek upstream to the confluence with Pace Creek. Dry Blue Creek has been occupied by loach minnow since listing and is occupied with records dating from 2001. In addition, this area is connected with Campbell Blue Creek, which has documented loach minnow records as recent as 2004. This area also contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include improper livestock grazing and nonnative fish species (see Table 1).

(9) Pace Creek—Loach Minnow Only—0.8 mi (1.2 km) of creek extending from the confluence with Dry Blue Creek upstream to a barrier falls. Pace Creek has been occupied by loach minnow since listing and is considered currently occupied with the most recent record from 1998. This area also contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include improper livestock grazing and nonnative fish species (see Table 1).

(10) Frieborn Creek—Loach Minnow Only—1.1 mi (1.8 km) of creek extending from the confluence with Dry Blue Creek upstream to an unnamed tributary. Frieborn Creek has been occupied by loach minnow since listing and is currently occupied with the most recent record from 1998. This area also contains one or more of the primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include improper livestock grazing and nonnative fish species (see Table 1).

(11) Little Blue Creek—Loach Minnow Only—2.8 mi (4.5 km) of creek extending from the confluence with the Blue River upstream to the mouth of a canyon. Little Blue Creek was occupied at the time of listing and is considered to be occupied as it is directly connected with the Blue River, which has documented loach minnow records as recent as 2004. This area also contains one or more of the primary constituent elements essential to the conservation of loach minnow including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats requiring special management or protections in this area

include grazing and nonnative fish (see Table 1).

Complex 5—Upper Gila River Complex—Grant, Catron, and Hidalgo Counties, New Mexico

Spikedace have been known to be present in this complex since 1935 and up through the present. Loach minnow have been known to be present in this complex since 1938 and up through the present. This complex was occupied by both spikedace and loach minnow at the time of listing (Propst et al. 1998, p. 14–15; ASU 2002; Propst 2002, p. 4, 22, 27, 31; Paroz et al. 2006, p. 63–64; Propst 2006, p. 2). This complex contains the largest remaining populations of both species in New Mexico. It is considered to represent the ''core'' of what remains of these species. Streams in this complex contain one or more of the PCEs for both species including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). In addition, the lateral extent of each segment within this complex of critical habitat contains sufficient PCEs (3 and 5) to provide for one or more of the life history functions of the spikedace and loach minnow. Threats requiring special management or protections in this area are addressed in each of the individual stream segment descriptions below. The largest areas are on U.S. Forest Service land, with small private inholdings. There are large areas of private lands in the Cliff-Gila Valley, and the BLM administers significant stretches upstream of the Arizona/New Mexico border. There are also small areas of NMDGF, National Park Service, and State of New Mexico lands.

(1) Upper Gila River—102.2 mi (164.4 km) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) upstream to the confluence of the East and West Forks of the Gila River. The Gila River was occupied by spikedace and loach minnow at the time of listing and continues to be occupied by both species (ASU 2002, Propst 2002, pp. 2, 4, 29–33). The Gila River from its confluence with the West Fork Gila and East Fork Gila contains one or more primary constituent elements for spikedace and loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs, glides, eddies). Threats to this area requiring special management or protections include water diversions, improper livestock grazing, recreation, road construction, and nonnative fish species (see Table 1). Approximately 7.2 mi (11.6 km) along the Gila River are owned by the Phelps Dodge Corporation. We received a management plan from Phelps Dodge addressing management for spikedace and loach minnow for these areas. On the basis of this plan, we are excluding their lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act, and because of economic impact concerns (see ''Exclusion under Section 4(b)(2) of the Act'' for additional information).

(2) East Fork Gila River—26.1 mi (42.0 km) of river extending from the confluence with the West Fork Gila River upstream to the confluence of Beaver and Taylor creeks. This area was occupied by both species at the time of listing and both species have been found there as recently as 2001. In addition, this area is connected to habitat currently occupied by spikedace and loach minnow on the West Fork of the Gila River. Portions of the East Fork Gila River contain one or more of the primary constituent elements essential to the conservation of spikedace and loach minnow including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs, glides, eddies). Threats to this area requiring special management or protections include improper livestock grazing, nonnative fish species, and ash flows from wildfires (See Table 1).

(3) Middle Fork Gila River—Spikedace Only—7.7 mi (12.3 km) of river extending from the confluence with the West Fork Gila River upstream to the confluence with Big Bear Canyon. This area is currently occupied (ASU 2002, Paroz et al. 2006, p. 63, Propst 2002, p. 22, Propst 2006, p. 2), and is connected to currently occupied habitat on the West Fork of the Gila River. The Middle Fork Gila River contains one or more of the primary constituent elements essential to the conservation of spikedace, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs, glides, eddies). Threats to this area requiring special management or protections include improper livestock grazing, nonnative fish species, and ash flows and increased sediment loading following recent wildfires (See Table 1).

(4) Middle Fork Gila River—Loach Minnow Only—11.9 mi (19.1 km) of river extending from the confluence with the West Fork Gila River upstream to the confluence with Brothers West Canyon. This area is currently occupied (ASU 2002, Paroz et al. 2006, p. 63, Propst 2002, p. 22, Propst 2006, p. 2) and is connected to currently occupied habitat on the West Fork of the Gila River. Portions of the Middle Fork Gila River contain one or more primary constituent elements essential to the conservation of loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs). Threats to this area requiring special management or protections include grazing, nonnative fish species, and ash flows and increased sediment loading following wildfires (See Table 1).

(5) West Fork Gila River—7.7 mi (12.4 km) of river extending from the confluence with the East Fork Gila River upstream to the confluence with EE Canyon. This lower portion of the West Fork Gila River was occupied by both spikedace and loach minnow at the time of listing and continues to be occupied by both species. This area contains one or more primary constituent elements essential to the conservation of spikedace and loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., riffles, runs, glides, eddies). Above EE Canyon, the river does not contain the features essential to the conservation of the species due to gradient and channel morphology. Threats to this area requiring special management or protections include nonnative fish species and ash flows and increased sediment loading following wildfires (See Table 1).

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 a 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 because 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.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected 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 with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the spikedace and loach minnow or their designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Spikedase and Loach Minnow and Their Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for spikedace and loach minnow jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the spikedace and loach minnow. 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 spikedace and loach minnow 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 opinion is warranted because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

For the reasons described in the Director's December 9, 2004 memorandum, 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 spikedace and loach minnow 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 spikedace and loach minnow 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 spikedace and loach minnow include, but are not limited to:

(1) Channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances;

(2) actions that would significantly and detrimentally alter the water chemistry in any of the stream segments listed above could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source);

(3) actions that would introduce, spread, or augment nonnative fish species could destroy or adversely modify the critical habitat of either or both species; and

(4) actions that would result in the removal of water from waterways. Such activities include, but are not limited to, construction and operation of canals and interbasin water transfers.

We consider all of the units designated as critical habitat, as well as those that have been excluded, to contain features essential to the conservation of the spikedace and loach minnow. All units are within the geographic range of the species, all were occupied by the species at the time of listing, and are likely to be used by the spikedace and loach minnow. Federal agencies already consult with us on activities in areas currently occupied by the spikedace and loach minnow, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the spikedace and loach minnow.

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. The Secretary may exclude an area from critical habitat if [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, can not require active management efforts toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory measures and terms and conditions to implement such measures are only specified when the proposed action would result in the incidental take of a listed animal species. Reasonable and prudent alternatives to the proposed Federal action would only be suggested when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in Gifford Pinchot, the Service conflated the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating federal actions that affect currently occupied critical habitat. The Court ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved

through implementing management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any management plan which considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the Gifford Pinchot decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the spikedace and loach minnow. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, habitat conservation plans have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: That designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions discussed in this rule because these areas are included in this rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation, that of informing State agencies and local governments about areas that would benefit from protection and enhancement of critical habitat for the spikedace and loach minnow, is already well established among State and local governments, and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse et al. 2002). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, Crouse et al. 2002, James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, active management, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbor Agreements, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996, Bean 2002, Conner and Mathews 2002, James 2002, Koch 2002, Brook et al. 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found, and more specifically, when critical habitat is proposed or designated. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999, Brook et al. 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999, Bean 2002, Brook et al. 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002). A critical habitat designation cannot require such actions on the lands being exempted here.

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the state is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC,

which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (such as axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the MOA exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

The Department of the Interior's Four C's philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private landowners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of Habitat Conservation Plans (HCPs).

Conservation agreements with non-Federal landowners (HCPs, contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections and providing for positive management actions beyond those that can be required through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

This section allows the Secretary to exclude areas from critical habitat for economic reasons if he determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. Congress has provided this discretionary authority to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

In making the following exclusions, we have in general considered that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the area, because all of the areas in question are currently occupied by the listed species and there will be requirements for consultation under section 7 of the Act, or for permits under section 10 (henceforth ''consultation''), for any take of these species, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, some elements of the analysis may also overstate some costs.

Conversely, the Ninth Circuit has recently ruled (*Gifford Pinchot,* 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court's direction may result in additional costs associated with the designation of critical habitat (depending upon the outcome of the rulemaking, as well as additional benefits to the species). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

In addition, we have received several credible comments on the economic analysis contending that it underestimates, perhaps significantly, the costs associated with this critical habitat designation. Both of these factors are a balancing consideration against the possibility that some of the costs shown in the economic analysis might be attributable to other factors, or are overly high, and so would not necessarily be avoided by excluding the area for which the costs are predicted from this critical habitat designation.

Relationship of Critical Habitat to Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

San Carlos Apache Tribe

The San Carlos Apache Tribe has one stream within its tribal lands, Eagle Creek, that is known to be currently

occupied by the spikedace and loach minnow and its tribal lands contain features that are essential to the conservation of the spikedace and loach minnow. The Tribe has completed and is implementing a Fisheries Management Plan (FMP) that includes specific management actions for the spikedace and loach minnow and conserves the PCEs. In this exclusion, we considered several factors, including our relationship with San Carlos Apache Tribe, and the degree to which the Tribe's FMP provides specific management for the spikedace and loach minnow. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The San Carlos Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has enacted the FMP. In addition, as trustee for land held in trust by the United States for Indian Tribes, the Bureau of Indian Affairs (BIA) provides technical assistance to the San Carlos Apache Tribe on management planning and oversees a variety of programs on their lands. Spikedace and loach minnow conservation activities have been ongoing on San Carlos Apache tribal lands, and, prior to the completion of their FMP, their natural resource management was consistent with management of habitat for this species. The development and implementation of the efforts formalized in the San Carlos Apache Tribes FMP will continue with or without critical habitat designation.

The San Carlos Apache Tribe highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its tribal lands, including the habitat of endangered and threatened species. We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon its tribal sovereignty and the right to self-government.

The San Carlos Apache Tribes' FMP provides assurances and a conservation benefit to the spikedace and loach minnow. Implementation of the FMP will result in protecting all known spikedace and loach minnow habitat on San Carlos Tribal Land and assures no net habitat loss or permanent modification will occur in the future. The purpose of the FMP includes the long-term conservation of native fishes, including the spikedace and loach minnow, on tribal lands. The FMP outlines actions to conserve, enhance, and restore spikedace and loach minnow PCEs, including efforts to eliminate nonnative fishes from spikedace and loach minnow habitat, actions that could not be compelled by a critical habitat designation. All habitat restoration activities (whether it is to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification of the habitat. All reasonable measures will be taken to conduct livestock grazing activities in a manner that will ensure the conservation of spikedace and loach minnow habitat. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey spikedace and loach minnow habitat, conduct research, perform habitat restoration, remove nonnative fish species, or conduct other beneficial spikedace and loach minnow management activities.

White Mountain Apache Tribe

The White Mountain Apache Tribe has one stream within its tribal lands, East Fork White River, that is known to be currently occupied by loach minnow and its tribal lands contain features that are essential to the conservation of the loach minnow. The White Mountain Apache Tribe currently has a management plan in place for loach minnow. The plan was completed in 2000 and provides for, among other conservation measures, inventory and monitoring, water quality protection ordinance, captive propagation, and relocation to minimize loss from catastrophic events such as fire and drought. Prior to and since the plan was developed, the Tribe has actively managed for loach minnow. In this exclusion, we considered several factors, including our relationship with the White Mountain Apache Tribe, and the degree to which the Tribe's management plan provides specific management for the loach minnow and conserves its PCEs. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The White Mountain Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has been managing for the conservation of the loach minnow. In addition, as trustee for land held in trust by the United States for Indian Tribes, the BIA provides technical assistance to the White Mountain Apache Tribe on management planning and oversees a variety of programs on their lands.

The White Mountain Apache Tribe highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its tribal lands, including the habitat of endangered and threatened species. We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon its tribal sovereignty and the right to self-government.

Yavapai Apache Tribe

The Yavapai Apache Tribe has long worked to protect the Verde River and its surrounding habitat as it flows on the lands of the Nation. The Nation is implementing strong conservation measures designed to preserve the Verde River and its riparian corridor for the benefit of all species, and in order to protect the traditional and cultural practices of the Nation. The Nation's continued efforts to work cooperatively with the Service to protect federally listed species have previously been demonstrated through adoption of a recent Southwestern Willow Flycatcher Management Plan, dated May 25, 2005. This document provides realistic and practicable objectives for protection of the riparian community on tribal lands. This habitat is coextensive with the habitat that was proposed for the spikedace. Because the existing Management Plan requires that the habitat of the Verde River be protected and preserved for the flycatcher, its protections similarly extend to the spikedace. In addition, the Tribe passed a resolution on June 15, 2006, confirming and declaring a riparian conservation corridor along the Verde River including 300 ft (91.4 m) on either side of the river. Within the conservation corridor stocking of non-native fishes is prohibited, and livestock grazing, construction and other activities shall be minimized to assure that no net loss of habitat for federally listed species such as the spikedace and loach minnow shall occur, and that no permanent modification of habitat important to listed species is allowed. The Tribe will also take all reasonable steps to coordinate with the Service regarding recreational activities, habitat restoration activities, or other activities that may impact the habitat important to the spikedace and loach minnow. The Tribe will monitor habitat, including

surveys for these fish and conduct research or other activities to provide a conservation benefit.

Below we determine, pursuant to a 4(b)(2) analysis, that those portions of the Verde River below the Prescott and Coconino National Forest boundary with private lands above the Verde Valley will be excluded from the final designation based upon economic costs. The Yavapai Apache tribal lands fall within this area, and are excluded as part of that overall exclusion. However, we also find pursuant to our analysis below that their lands should be excluded on the basis of our relationship with the Yavapai Apache Tribe, and the Tribe's management of the Verde River that we believe provides a conservation benefit to the spikedace.

(1) Benefits of Inclusion

Including lands of the San Carlos Apache Tribe, the White Mountain Apache Tribe, and the Yavapai Apache Tribe in critical habitat would provide some additional benefit from section 7 consultation, because we could consult via the BIA on actions that may adversely affect critical habitat. Activities covered in previous consultations include livestock grazing, recreation, fish stocking, fire management, bank stabilization projects, and conservation measures that benefited spikedace and/or loach minnow. These measures included monitoring, fence repair (to exclude cattle from overusing and thereby damaging habitat), and education programs to inform the public of the need to avoid actions that damage habitat. However, we note that because the spikedace and loach minnow are listed species and are found on these Tribal lands, section 7 consultation under the jeopardy standard will still be required if Tribal or BIA activities may adversely affect spikedace or loach minnow, regardless of whether these lands are included in the final critical habitat designation. As a result, we expect that inclusion of San Carlos Apache, White Mountain Apache, and the Yavapai Apache Tribe lands in the critical habitat designation would provide only that additional habitat protection accorded by critical habitat as discussed by the Ninth Circuit Court of Appeals in the Gifford Pinchot ruling discussed above.

Nevertheless, few additional benefits would be derived from including these Tribal Lands in the spikedace and loach minnow final critical habitat designation beyond what will be achieved through the implementation of their management plans. As noted above, the primary regulatory benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation pursuant to section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. These three tribes have already agreed under the terms of their management plans and by tribal resolution to protect riparian and aquatic communities, to ensure no net loss of habitat, to coordinate with the Service in order to prevent any habitat destruction, and to conduct activities consistent with the conservation of all native species, including the spikedace and loach minnow and their PCEs.

As discussed above, we expect that little additional educational benefit would be derived from designating San Carlos Apache, White Mountain Apache, and Yavapai Apache tribal lands as critical habitat. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompany the development of this critical habitat designation, as evidenced by the Tribes working with the Service to address habitat and conservation needs for the spikedace and loach minnow. Additionally, we anticipate that the Tribes will continue to actively participate in working groups, and provide for the timely exchange of management information. The educational benefits important for the long-term survival and conservation of the spikedace and loach minnow are being realized without designating this area as critical habitat. Educational benefits will continue on these lands whether or not critical habitat is designated because the Tribes already recognize the importance of those habitat areas to the spikedace and loach minnow.

Another possible benefit is the additional funding that may be generated for habitat restoration or improvement by having an area designated as critical habitat. In some instances, having an area designated as critical habitat may improve the ranking a project receives during evaluation for funding. The Tribes often require additional sources of funding in order to conduct wildlife-related activities. Therefore, having an area designated as critical habitat could improve the chances of the Tribes receiving funding for spikedace or loach minnow related projects. Additionally, occupancy by spikedace or loach minnow also provides benefits to be considered in evaluating funding proposals. Because there are areas of occupied habitat on these Tribal lands this may also help secure funding for management of these areas.

For these reasons, then, we believe that designation of critical habitat would provide some additional benefits.

(2) Benefits of Exclusion

The benefits of excluding San Carlos Apache, White Mountain Apache, and the Yavapai Apache tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to Tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the spikedace and loach minnow and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the spikedace and loach minnow and their habitats; (3) the allowance for continued meaningful collaboration and cooperation on spikedace and loach minnow management and other resources of interest to the Federal government; and (4) the provision of conservation benefits to riparian ecosystems and a host of species, including the spikedace and loach minnow and their habitat.

During the development of the spikedace and loach minnow critical habitat designation (and coordination for other critical habitat proposals), and other efforts such as conservation of native fish species in general, we have met and communicated with each of these Tribes to discuss how they might be affected by the regulations associated with spikedace and loach minnow conservation and the designation of critical habitat. As such, we established relationships with these Tribes specific to spikedace and loach minnow conservation. As part of our relationship, we provided technical assistance to the Tribes to develop measures to conserve the spikedace and loach minnow and their habitat on their lands. These measures are contained within their management plans and tribal resolution that we have in our supporting record. This proactive action was conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). We believe that the San Carlos Apache,

White Mountain Apache, and the Yavapai Apache Tribes should be the governmental entities to manage and promote the conservation of the spikedace and loach minnow on their lands. During our communication with the Tribes, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian aquatic ecosystems.

The designation of critical habitat on these Tribal lands would be expected to adversely impact our working relationship with them. In fact, during our discussions with the Tribes, we were informed that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. To this end, we found that the Tribes would prefer to work with us on a government-to-government basis. We view this as a substantial benefit.

In addition to management/conservation actions described for the conservation of the spikedace and loach minnow, we anticipate future management/conservation plans to include conservation efforts for other listed species and their habitat. We believe that many Tribes are willing to work cooperatively with us to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species will likely be contingent upon whether the San Carlos Apache, White Mountain Apache, and the Yavapai Apache Tribal lands are designated as critical habitat for the spikedace and loach minnow. Thus, the benefit of excluding these lands would be future conservation efforts that would benefit the spikedace and loach minnow as well as other listed species.

Another benefit of excluding these Tribal lands from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because in this case critical habitat is being excluded in occupied areas already subject to section 7 consultation and a jeopardy analysis, it is anticipated this reduction would be minimal.

(3) Benefits of the Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the spikedace and loach minnow on these Tribal lands are small in comparison to the benefits of the exclusion. Exclusion would enhance the partnership efforts focused on recovery of the spikedace and loach minnow within these river reaches. Excluding these areas also would reduce some of the administrative costs during consultation pursuant to section 7 of the Act. We discuss below additional economic costs and an exclusion of a portion of the Verde River that include tribal lands of the Yavapai Apache Nation.

(4) The Exclusion Will Not Result in Extinction of the Species

Because these river reaches on the Tribal lands are occupied by the spikedace and loach minnow, which are protected from take under section 9 of the Act, any actions that might kill spikedace or loach minnow, including habitat modification that would cause death of either species, must either undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. Additionally, we believe that the exclusion of these lands from critical habitat would not result in the extinction of the spikedace or loach minnow because their management outlines and the provisions of a resolution specifically address conservation of these species. The tribal management strategies outline actions to conserve, enhance, and restore spikedace and loach minnow habitat, including efforts to eliminate nonnative fishes from their habitat. Such efforts provide greater conservation benefit than would result from a designation of critical habitat. This is because section 7 consultations for critical habitat only consider listed species in the project area evaluated and Federal agencies are only committed to prevent adverse modification to critical habitat caused by the particular project and are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Such efforts provide greater conservation benefit than would result for designation as critical habitat. As a result, there is no reason to believe that this exclusion would result in extinction of the species.

Partnerships and Management Plans on Private Lands

The Phelps Dodge Corporation (Phelps Dodge) provided two management plans to the Service during the second open comment period. One plan was provided for Eagle Creek in southeastern Arizona, and the other is for portions of the middle Gila River in New Mexico. We provide a summary of each of these plans below.

Eagle Creek Management Plan

Phelps Dodge's lands along Eagle Creek are comprised of individual land parcels adjoining the southern boundary of the Apache-Sitgreaves National Forests and the eastern boundary of San Carlos Apache Tribe lands. The parcels are not entirely connected; there are intervening portions of Forest Service and other private lands between parcels of Phelps Dodge's lands.

The management plan would affect only those lands owned by Phelps Dodge. Phelps Dodge owns approximately 34 square miles of land around the upper portions of Eagle Creek; however, not all of lands encompass or are adjacent to Eagle Creek. Phelps Dodge owns land along approximately 11.0 mi (17.8 km) of Eagle Creek, which are covered by the management plan. The Service has determined that Eagle Creek currently supports one of more of the PCEs for loach minnow and is occupied by loach minnow. In addition, we determined (see Table 1) that nonnative aquatic species, water diversions, and mining are all potential threats within this area.

Phelps Dodge's water supply for its Morenci Mine operation is derived from a variety of water rights, including a Black River water transfer (supported by a Central Arizona Project exchange), several deep ground water wells, and surface water from Eagle Creek, which constitutes approximately six percent of the natural flow of that Creek.

Phelps Dodge indicates within the management plan that their overall goal is to operate its Eagle Creek water system to maintain perennial flows in Eagle Creek from the confluence of Willow Creek to the Phelps Dodge diversion dam to the extent it is legally, economically, and hydrologically reasonable to do so. Within the management plan, Phelps Dodge developed goals for both the loach minnow and spikedace within the Phelps Dodge reach. These goals regarding the two species include the following: (1) Monitoring distribution and abundance; (2) obtaining an understanding of the population dynamics as they relate to existing

habitat conditions and land use practices; (3) continuing historic land use practices and water supply practices which enhance water flows; and (4) consideration of habitat when deviating from such historic management practices. With respect to monitoring, Phelps Dodge has supported various biological surveys and studies on Eagle Creek, and intends to continue participating in such research projects in the near future. To gain a better understanding of the population dynamics of the loach minnow and spikedace, Phelps Dodge proposes to support the Rocky Mountain Research Station in its research.

Phelps Dodge further intends to utilize the management plan for loach minnow and spikedace by doing the following: (1) Form working relationships with others that promote the conservation of these fish and their habitat; (2) develop the opportunity for collaboration and cooperation on management issues and other resources of interest to the Federal government; and (3) provide conservation benefits to riparian ecosystems, including habitat that may be or may potentially become suitable.

To ensure continued conservation of spikedace and loach minnow in Eagle Creek, Phelps Dodge has also committed to regular coordination with the Service, which will include an annual summary to the Service regarding implementation of the management plan. Any deviations from the plan will be addressed, as will intended implementation of actions under the plan for the following year. Phelps Dodge will make all reasonable efforts to provide the Service with notice of any significant changes to the management of its water supply system that are outside the range of historic operating parameters discussed in the management plan. If any changes are required, Phelps Dodge will consider loach minnow and spikedace habitat and any comments received from the Service, and will make reasonable efforts to minimize adverse impacts to these fish and the PCEs to the extent legally, economically, and practically reasonable, so long as such actions do not impair their ability to hold, exercise, or modify their water rights.

Phelps Dodge will also make reasonable efforts to coordinate their water management activities by attending regularly scheduled fisheries management working group meetings to stay abreast of ongoing management issues and concerns within the overall Eagle Creek area. Phelps Dodge will also consider stream renovation projects for Eagle Creek should the Service decide to pursue them, provided they do not interfere with existing land and water use and rights.

Gila River Management Plan

The Gila River Management Plan covers riparian lands owned by Phelps Dodge in the middle reach of the mainstem Gila River south of Mogollon Creek in New Mexico. Land ownership in this area is principally Federal, with irregularly dispersed private and State lands.

The management plan would affect only those lands owned by Phelps Dodge. Phelps Dodge owns lands surrounding or bordering approximately 7.3 mi (11.7 km) of the mainstem Gila River. Some of the lands owned by Phelps Dodge in this area are leased for ranching and agriculture purposes, including the U-Bar Ranch. The Service has determined that these areas currently support one or more of the PCEs for spikedace and loach minnow, and both species currently occupy this portion of the stream. Those portions of the mainstem Gila River on Phelps Dodge lands support diversity and abundance of native fishes. In addition, this reach contains a high proportion of favorable habitat types for spikedace and loach minnow, including low gradient riffles and glide-runs. In addition, we determined (see Table 1) that recreation, roads, grazing, nonnative aquatic species, and water diversions are potential threats in this area that may require special management or protections.

Phelps Dodge's water rights and delivery system in this area have been developed and maintained to provide a dependable and adequate water supply for the operation of the Tyrone Mine. The delivery system consists of a diversion structure on the Gila River as well as a retention facility (Bill Evans Lake), and several wells. Surface water is diverted from the Gila River at the diversion structure for storage in Bill Evans Lake and transported via pipeline to the Tyrone Mine Facility.

Within the management plan, Phelps Dodge commits to the following: (1) Monitoring the distribution and abundance of the loach minnow and spikedace in the Gila River passing through the Phelps Dodge Reach; (2) obtaining an understanding of the population dynamics of the loach minnow and spikedace as they relate to existing habitat conditions and land use practices in the Gila River; (3) continuing historic land use practices and water supply practices which enhance water flows in the Phelps Dodge Reach, (4) and considering loach minnow and spikedace habitat when deviating from the historical management practices. These commitments will be carried out in the same manner as described above under the Eagle Creek Management Plan.

Within the management plan, Phelps Dodge commits to coordinating with the Service regarding management activities on their lands. This coordination will include an annual summary to the Service regarding implementation of the management plan. Any deviations from the plan will be addressed, as will the intended implementation of actions under the plan for the following year. The report will be provided to the Service during the first quarter of each calendar year.

Phelps Dodge will also make all reasonable efforts to provide the Service with notice of any significant changes to the management of its water supply system that are outside the range of historic operating parameters discussed in the management plan. If any changes are required, Phelps Dodge will consider loach minnow and spikedace habitat and any comments received from the Service, and will make reasonable efforts to minimize adverse impacts to the fish and their PCEs to the extent legally, economically, and practically reasonable, so long as such actions do not impair their ability to hold, exercise, or modify their water rights.

Phelps Dodge will also make reasonable efforts to coordinate their water management activities by attending regularly scheduled fisheries management working group meetings to stay abreast of ongoing management issues and concerns within the overall Gila River area. Phelps Dodge will also consider stream renovation projects for the Gila River should the Service decide to pursue them, provided they do not interfere with existing land and water uses and rights.

The following analysis applies to both the Eagle Creek and Gila River areas covered by the Phelps Dodge's management plans, referred to as Plans below.

(1) Benefits of Inclusion

There are few benefits in including areas covered by these Plans in the final critical habitat designation above those benefits that will be achieved through the implementation of these Plans, including voluntary management and restoration projects. As discussed above, the principal benefit of any area designated as final critical habitat is that activities adversely affecting critical habitat require consultation under section 7 of the Act if a Federal action is involved. Such consultation would ensure that adequate protection is

provided to avoid destruction or adverse modification of critical habitat.

As of the date of this final rule, the Service has not conducted any formal consultations that have directly addressed the impacts of mining activities in the areas proposed as critical habitat (Final Economic Analysis 2004, pg. 5–3). There have, however, been several informal consultations regarding surface mining since the listing of the species. In addition, the Service conducted one formal consultation on spikedace and razorback sucker (*Xyrauchen texanus*) regarding spillway repair to the Phelps Dodge Diversion dam on Eagle Creek in 1996. This consultation did not directly address impacts of the diversion dam itself, though the Service recommended that such a consultation be conducted. The consultation found that the proposed action was not likely to adversely affect the fish species, and recommended minimizing the use of heavy equipment in the wetted area, making reasonable efforts to ensure no pollutants enter surface water, catch and release of any spikedace found, as a well as monitoring activities.

The small number of previous section 7 consultations during the past 20 years since these species have been listed and while critical habitat was designated and the expectation that there will be will be few if any future projects with a Federal nexus gives us reasonable grounds to believe that critical habitat designation will create relatively few benefits for the spikedace and loach minnow in these areas. Since these areas covered by the Plans are privately owned, unless there is a Federal nexus in connection with activities occurring in these areas, the designation of critical habitat will not require consultation with the Service for such activities. It is possible that the maintenance of the Phelps Dodge Diversion dam could act as a Federal nexus for consultation because the diversion is likely subject to U.S. Army Corps of Engineers permit requirements. This could result in consultation, but because these areas are considered to be occupied by the species, consultation would already take place under the jeopardy standard (see ''General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process'' above). Moreover, since the prior consultation on maintenance of this structure found it was ''unlikely to adversely affect'' the species, it is not reasonable to anticipate that a future consultation on maintenance of the structure would result in a finding of adverse modification of the critical habitat.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value (species presence and their PCEs) of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the spikedace and loach minnow and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, Phelps Dodge is currently working with the Service to address the conservation of these fish and to avoid impacts to their habitat (PCEs), and the agreements they have offered would institutionalize that cooperation. Further, these areas were included in the proposed designation, which itself has reached a wide audience, and has thus provided information to the broader public about the conservation value of these areas. Thus, the educational benefits that might follow critical habitat designation have already been provided through the multiple notice and comments which accompanied the development of this critical habitat designation and previous designations. For these reasons, then, we believe that designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation for the presence of these species.

(2) Benefits of Exclusion

We believe that significant benefits would be realized by excluding these areas from the final critical habitat designation that include: (1) The continuance and strengthening of our relationship with Phelps Dodge to promote the conservation of the spikedace and loach minnow and their habitat; (2) the allowance for collaboration and cooperation in surveys, monitoring, and research as we work towards recovery of these species; and (3) the conservation benefits to the Gila River and Eagle Creek ecosystems and spikedace and loach minnow habitat that might not otherwise occur, all as set out in the Plans summarized above. Phelps Dodge is greatly concerned about the possible impacts of a critical habitat designation in this area (James 2006, p. 7, 10–20) and is offering these management plans as an alternative. It is unlikely they would proceed with them if these areas were designated as critical habitat.

Phelps Dodge, including the U-Bar Ranch that they own on the Gila River, is an important land manager within Eagle Creek and the Gila River watersheds. The surveys, monitoring, research, and commitment to collaborate with the Service on restoration projects within these areas document that conservation efforts will occur for these fish and their habitat. These activities and cooperation may not occur if we were to designate critical habitat on these private lands, and these actions cannot be compelled by the designation, particularly given the expectation that there would be a very limited, if any, federal nexus for having a consultation on private activities here. We believe that the results of these activities promote long-term protection and are aimed at conserving the spikedace and loach minnow in these areas. The benefits of excluding these areas from critical habitat will encourage the continued conservation, land management, and coordination with the Service. If these areas are designated as critical habitat, we may jeopardize future conservation, research, and information sharing for the recovery of the spikedace and loach minnow and likely not secure any offsetting benefits from the designation due to the apparent lack of a federal nexus to trigger consultation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

In summary, the benefits of including lands owned by Phelps Dodge in the final critical habitat designation are small, and are limited to minimal educational benefits and potentially some benefits through section 7 consultations. However, since these lands are privately owned, unless a Federal nexus exists, final critical habitat would not result in a section 7 consultation. The lack of previous section 7 consultations during the 20 years since these species have been listed in these areas being excluded from the final designation of critical habitat give us reasonable grounds to believe that such a Federal nexus is unlikely to occur, or would likely occur only for the subject of the prior consultation, which resulted in a finding of ''unlikely to adversely affect'' the species. We also note that the requirement of Federal agencies to consult with us on activities that may affect these species still exists, whether or not critical habitat is designated, since these areas are considered occupied. The benefits of excluding these areas from designation as critical habitat for the spikedace and loach minnow are significant, and include encouraging the continuation of monitoring, surveys, research, enhancement, and restoration activities that will benefit spikedace and loach

minnow PCEs. The exclusion of this area will likely also provide additional benefits to the species by encouraging a cooperative working relationship with Phelps Dodge. Although the benefits of these management plans are less than plans in other areas upon which exclusions are often made (i.e. habitat conservation plans), the likely lack of a Federal nexus for these lands means that the benefits of these plans still exceed by the considerable margin the benefits the species would receive from the designation. We accordingly find that the benefits of excluding these areas from the final critical habitat designation outweigh the benefits of their inclusion.

(4) Exclusion Will Not Result in Extinction of the Species

We have determined that exclusion of areas covered by these Plans on the Gila River and Eagle Creek will not result in extinction of these species. Any actions that might adversely affect the spikedace and loach minnow must undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10. The spikedace and loach minnow are protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as final critical habitat. Phelps Dodge is committed to greater conservation measures on their land than would be available through the designation of critical habitat. Accordingly, we have determined that exclusion of these areas of Eagle Creek and the Gila River as discussed above under subsection 4(b)(2) of the Act will not cause the extinction of the species.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on June 6, 2006 (71 FR 32496). We accepted comments on the draft analysis until October 16, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the spikedace and loach minnow. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies.

The economic analysis considers the economic impacts of conservation measures taken prior to and subsequent to the final listing and designation of critical habitat for the spikedace and loach minnow. Pre-designation impacts are typically defined as all management efforts that have occurred since the time of listing. The spikedace and loach minnow were listed on July 1 and October 28, 1986, respectively (51 FR 23769, 51 FR 39468). Our draft economic analysis found that the total post-designation costs associated with the five proposed critical habitat units are forecast to range from $25.2 to $100.3 million over 20 years, with discounted (7%) annual costs at $1.4 to $6.7 million annually (IEc 2006, p. ES–2). Estimated costs are primarily due to impacts on water use and management, species management, and recreation.

Based upon these estimates, we conclude in the final analysis, which reviewed and incorporated public comments, that no significant economic impacts are expected from the designation of critical habitat for spikedace and loach minnow, except for the Verde River, as discussed in further detail in the ''Verde River'' section below. A copy of the economic analysis is included in our supporting record and may be obtained by contacting the Arizona Ecological Services Field Office (see **ADDRESSES** section) or online at *http://www.fws.gov/southwest/es/arizona/*.

Verde River

As discussed in the ''Summary of Changes from the Proposed Rule'' section above, we have determined that proposed critical habitat on those portions of the Verde River below the Prescott and Coconino National Forest boundary with private lands will not be designated as final critical habitat due to the potential economic impact of designation. The economic analysis estimates the potential future impacts (2006–2025) associated with the entire stretch of the Verde River to be $64.59 million (undiscounted dollars). Although these costs do not account for variance in river miles or population, they are a full order of magnitude larger than the estimated impacts for any other stretch of river proposed as critical habitat, and represent more than half of the total estimated impacts ($100.3 million) for the entire proposed critical habitat designation. Estimated quantified costs on this reach primarily stem from potential impacts to agriculture, but also include impacts on development and recreation activities. Unquantified potential impacts could include impacts to water users, including Verde Valley municipalities and the City of Prescott.

The economic analysis indicates that most of these costs occur in the lower portion of the Verde River where the river runs through several communities in the Verde Valley that are experiencing rapid urban growth. Therefore, we are excluding from the final critical habitat designation the lower portion of the Verde River below the Prescott and Coconino National Forest boundary with private lands due to significant and disproportionate economic impacts.

We have reached this determination because we believe the benefits of excluding these segments from the final critical habitat designation outweigh the benefits of including them as critical habitat.

We have considered in making the lower Verde River exclusion that all of the costs estimated in the draft economic analysis may not be avoided by excluding this area. This is because this area is currently occupied by the spikedace and there will be requirements for consultation under section 7 of the Act or for permits under section 10 for any take of the species. Additionally, other protections for the species exist elsewhere in the Act and

under State and local laws and regulations.

(1) Benefits of Inclusion

The primary conservation value of the lower Verde River proposed critical habitat segment is to sustain existing populations. The area excluded from the final designation is currently considered occupied by the spikedace. If this area is designated as critical habitat, any actions with a Federal nexus which might adversely modify or destroy the critical habitat would require a consultation with us. However, inasmuch as this area is currently occupied by the spikedace, consultation for activities which might adversely impact the species, including possibly habitat modification (see definition of ''harm'' at 50 CFR 17.3) would be required even without the critical habitat designation. We recognize that consultation for critical habitat would likely provide some additional benefits to the species under the provision of the *Gifford Pinchot* decision.

As discussed above, we expect that little additional educational benefits would be derived from including this area as critical habitat. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this critical habitat designation and previous designations.

Designation of critical habitat in the lower Verde River might result in consultations with Federal agencies or as part of intra-Service consultations for HCPs that may lead to conservation activities for the spikedace; however, we believe any possible benefits would be minimal as derived from critical habitat because the spikedace is present in the Verde River and consultations are already likely to occur.

In summary, we believe that designating this proposed segment as final critical habitat would provide little additional Federal regulatory benefits for the species. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service for any action which may adversely affect the species. Some improvements in habitat quality might result from a designation, but we believe that they would be minimal, as discussed above. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and contact with the affected parties during development of the economic analysis.

(2) Benefits of Exclusion

The benefits of excluding the lower Verde River from critical habitat designation are avoidance in up to $64.59 million (undiscounted dollars) in possible economic impacts, as set out in the economic analysis. While the cost estimate of $64.59 million is an estimate of potential economic costs for the entire Verde River, we are only excluding the lower portion because we believe the lower portion of the Verde River accounts for some of the highest cost areas since this is where the river runs through several communities in the Verde Valley that are experiencing rapid urban growth. Additionally, as discussed below, we find that the upper portion of the Verde River is the most important for conservation of the spikedace because it accounts for 91 percent of the known locations of the spikedace in the Verde River.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures. These generally provide greater conservation benefits than result from designation of critical habitat—even in the post-*Gifford Pinchot* environment—which requires only that the there be no adverse modification resulting from federally-related actions. Generally, positive conservation efforts by landowners contribute more towards recovery of species than the mere avoidance of adverse impacts required under a critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating final critical habitat for the spikedace on the lower portion of the Verde River are small in comparison to the benefits of exclusion. In making this finding, we have weighed the benefits of including the lower Verde River as final critical habitat against the possible costs imposed on private parties as a result of the final critical habitat designation.

We have therefore excluded these lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

Because we consider the lower portion of the Verde River to be occupied by spikedace, a species protected from take under section 9 of the Act, any actions that might adversely affect or result in take of the spikdace, regardless of whether a Federal is present, must undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. This exclusion leaves these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. Additionally, we have concluded that excluding this area from final critical habitat will not result in the extinction of the spikedace because this exclusion is only a small percentage of the overall critical habitat designation and, as noted above, 91 percent of the known locations of the spikedace occur in the upper Verde River, which is not being excluded from the final critical habitat designation.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2) of the Act, if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), 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. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses, Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we 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 the rule could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., water management and use, livestock grazing, Tribal activities, residential and related development, species-specific management activities, recreation activities, fire management activities, mining, and transportation). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the spikedace or loach minnow. Federal agencies must also consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

Our economic analysis of this designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of these species and proposed designation of their critical habitat. We evaluated small business entities in water management and use, livestock grazing activities, mining operations, management activities specific to spikedace and loach minnow, recreation, residential and related development, Tribes, transportation, and fire management. Based on our analysis, impacts are anticipated to occur in Tribes, agricultural crop production as it relates to water use and management, livestock grazing, residential and commercial development, and recreation. The following is a summary of the information contained in Appendix B of the economic analysis:

Tribes

The economic analysis estimates that future impacts resulting from spikedace and loach minnow conservation activities on Tribal lands could include administrative costs of consultations, surveys and monitoring, development of a Fisheries Management Plan, modifications to grazing, fire management, modifications to recreational activities, and potential project modifications to restoration activities. The economic analysis provides additional detail on anticipated impacts; however, because all Tribal lands have been excluded under section 4(b)(2), these costs will not be incurred.

Water Management and Use: Agricultural Crop Production

The economic analysis notes that spikedace and loach minnow conservation activities have not impacted crop production since the listing of the species in 1986. The economic analysis further notes that, because agricultural water use comprises 98 percent of surface water use and 81 percent of groundwater use in counties containing critical habitat for spikedace and loach minnow, it is likely that any additional water supplies needed for the species would come from agriculture. Therefore, the analysis focuses on a potential scenario under which farmers would give up agricultural water use in an effort to provide adequate water supply for the species, leading to reductions in crop production. The economic analysis notes that, because of the uncertainty involved in estimating the potential reduction in agricultural production, the scenario analyzed represents the high-end estimate of impacts to water users.

Should this scenario be realized, losses in land values associated with transitioning irrigated cropland to non-irrigated lands will likely result, and would range from $3,175 to $6,190 per acre, depending on the area in which critical habitat is located. A total of 6,310 acres of cropland are in the vicinity of proposed critical habitat (i.e., in the same valley), and 810 of those acres are located within the critical habitat designation itself. The average farm size in affected counties ranges from 1,300 acres to 7,800 acres. Assuming affected farms are average-sized for their counties, approximately one to five farms could experience reductions in crop production. Alternatively, the median farm size in affected counties ranges from 41 to 1,300 acres. Assuming affected farms are median-sized for their counties, approximately 4 to 199 farms could experience reductions in crop production. Under the assumption that all farms are small (1,884 farms across 5 counties), the estimate of future impacts (1 to 199) represents between less than 1 percent to 6.5 percent of total small farm operations in counties that contain spikedace and loach minnow critical habitat. The analysis assumes that affected farms are small, so that total future impacts represent less than

1 percent to 6.5 percent of total small farm operations in counties that contain spikedace and loach minnow habitat.

Livestock Grazing

The economic analysis notes that ranching operations holding Federal grazing allotment permits are anticipated to experience economic impacts as they implement species conservation requirements for grazing activities. The analysis assumes that each Federal grazing allotment falling within critical habitat is run by a unique ranching operation, so that approximately 76 ranching operations may be impacted annually. These 76 ranches represent 4.7 percent of ranches in the affected counties, or 1.0% of ranches in New Mexico and Arizona. Annual costs to each of these ranches would be between $390 and $9,200 per ranch. With average revenues per ranch in this region at $166,700, these losses represent between 0.2 and 5.5 percent of each ranch's estimated average revenues.

The analysis notes that approximately 72 small ranching operations may experience a reduction in revenues of between 0.9 and 22 percent of annual revenues annually. The analysis concludes that the extent to which these impacts are significant to any individual ranch depends on its financial conditions.

Residential and Commercial Development

The analysis for residential and commercial development concludes that impacts are likely to occur in the Verde River segment, as it contains a large amount of private land, a relatively large human population, and high projected population growth potential in the next 20 years. The analysis notes that it is likely that project modification costs associated with spikedace and loach minnow conservation activities would be passed from the developer to the existing landowner in the form of reduced prices for raw land. The landowners may be developers, farmers, ranchers, or simply individuals or families that are not registered businesses, and the analysis concludes that some of the existing landowners may be small entities.

Impacts to developers are estimated to include fencing costs, scientific studies, surveying and monitoring requirements, and possibly off-setting mitigation (habitat set-aside). Costs are estimated to range from $3.1 million to $4.8 million per large development, or $3,900 to $5,900 per housing unit ($190 to 300 annually, if costs are distributed evenly over 20 years). Total impacts to development activities are estimated at $3.4 to $5.2 million over 20 years, or $319,000 to $419,000 annually (assuming a discount rate of seven percent). The analysis concludes that up to 1,646 housing units could be built on approximately 2,880 privately owned acres within proposed critical habitat over the next 20 years in Yavapai County. The economic analysis provides additional detail on anticipated impacts; however, because we excluded the middle and lower portions of the Verde River under section 4(b)(2) of the Act, the majority of these costs will not be incurred.

Recreation

The analysis notes that areas currently stocked with nonnative sportfish include the Camp Verde area in the Verde River in Complex 1 and the East Fork Gila River in Complex 5. The analysis states that the future impact of the critical habitat designation on the stocking regimes in these areas is unknown, as is the reduction in fishing activity that would occur if stocking is curtailed, and whether or not nonnative fish stocking might be replaced with catchable native fish stocking (e.g., Apache trout). Because of these unknowns, the analysis evaluated the high-end cost of angler days at risk if sportfish stocking were discontinued in these reaches.

Angling trips are valued at $8.6 million over 20 years (or $816,000 annually), assuming a discount rate of seven percent. The analysis notes that State fish managers typically identify alternative sites for stocked fish when areas are closed to stocking, so that angler days are likely to be redistributed to other areas rather than lost altogether. The high-end estimate does not consider the possibility that recreators will visit alternative fishing sites.

The two stream reaches where impacts on recreation are anticipated to occur are in Yavapai County, Arizona, and Catron County, New Mexico. If angler trips to the two stream reaches are not lost, but instead are redistributed to other streams, then regional impacts on small businesses are likely to be minimal. If, as in the high-end estimate of impacts, angler trips to the two stream reaches are not undertaken, localized impacts on anglers, and in turn small businesses that rely on fishing activities, could occur. These impacts would be spread across a variety of industries including food and beverage stores, food service and drinking places, accommodations, transportation, and sporting goods. The analysis found that these industries generate approximately $829 million in total annual sales for these two counties. Based on 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for Arizona and New Mexico, average expenditures per fishing trip are approximately $37, with the bulk of these expenditures occurring in the food service and gasoline industries. By multiplying this per-trip estimate by the number of fishing trips potentially lost due to spikedace and loach minnow conservation activities (0 to 13,260 days per year, assuming one day per trip), expenditures by these anglers are estimated to be up to $485,000 annually. The high-end estimate of annual loss of trip expenditures could therefore represent a loss of approximately 0.06 percent of annual revenues for affected businesses.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on the spikedace and loach minnow and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary

terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are carrying out, permitting, or funding of: Livestock grazing, road and bridge construction and maintenance, water diversions (including maintenance of diversion structures), recreation, gravel mining, burning and wildfires, mining, watershed disturbances, and the spread of nonnative aquatic species.

It is likely that a developer or other project proponent could modify a project or take measures to protect the spikedace and loach minnow. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this critical habitat designation would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include actions needing a section 404 permit under the Clean Water Act (e.g., livestock grazing, agricultural water developments, recreation). A regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the spikedace and loach minnow is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), 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, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; 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 who receive Federal funding, assistance, or permits or who 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; additionally, critical habitat would not shift the costs of the large entitlement programs listed above on to State governments.

(b) The economic analysis discusses potential impacts of critical habitat designation for spikedace and loach minnow on water management activities, livestock grazing, Tribes, residential and commercial development activities, recreation activities, fire management activities, mining, and transportation activities. The analysis estimates that the total costs of the rule could range from $25.2 to $100.3 million in undiscounted dollars over 20 years. Impacts are largely anticipated to affect water use and management, recreation, and livestock. Impacts on small governments are not anticipated, or they are anticipated to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the spikedace and loach minnow will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the spikedace and loach minnow in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for these fish does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from and coordinated development of this critical habitat designation with appropriate State resource agencies in Arizona and New Mexico. The designation of critical habitat in areas currently occupied by spikedace or loach minnow may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas containing 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 making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with 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 the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of spikedace and loach minnow.

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 record keeping 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). However, when the range of the species includes States within the Tenth Circuit, such as that of the spikedace and loach minnow, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We conducted a NEPA evaluation and notified the public of the draft document's availability on June 6, 2006 (71 FR 32496). We completed an environmental assessment and finding of no significant impact on the designation of critical habitat for the spikedace and loach minnow. The final documents are available and can be viewed online at *http://www.fws.gov/southwest/es/arizona/.*

Government to Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have excluded all Tribal lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

The purpose of Secretarial Order 3206 (Secretarial Order) is to ''clarif(y) the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.'' If there is potential that a tribal activity could cause either direct or incidental take of a species proposed for listing under the Act, then meaningful government-to-government consultation will occur to try to harmonize the Federal trust responsibility to Tribes and tribal sovereignty with our statutory responsibilities under the Act. The Secretarial order also requires us to consult with Tribes if the designation of an area as critical habitat might impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights.

References Cited

A complete list of all references cited in this rulemaking is upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section above).

Authors

The primary authors of this package are the Arizona Ecological Services Office staff (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.95(e) by revising the critical habitat entries for ''Loach Minnow (*Tiaroga cobitis*)'' and ''Spikedace (*Meda fulgida*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Loach Minnow (Tiaroga Cobitis)

(1) Critical habitat units are depicted for Apache, Graham, Greenlee, and Pinal Counties, Arizona; and Catron, Grant, and Hidalgo Counties, New Mexico, on the maps and as described below.

(2) Within these areas, the primary constituent elements of critical habitat for loach minnow are the following:

(i) Permanent, flowing water with no or low levels of pollutants, including:

(A) Living areas for adult loach minnow with moderate to swift flow velocities between 9.0 to 32.0 in/second (24 to 80 cm/second) in shallow water between approximately 1.0 to 30 inches (3 cm to 75 cm) in depth, with gravel, cobble, and rubble substrates;

(B) Living areas for juvenile loach minnow with moderate to swift flow velocities between 1.0 and 34 in/second (3.0 and 85.0 cm/second) in shallow water between approximately 1.0 to 30 inches (3 cm to 75 cm) in depth with sand, gravel, cobble, and rubble substrates;

(C) Living areas for larval loach minnow with slow to moderate velocities between 3.0 and 20.0 in/second (9.0 to 50.0 cm/second) in shallow water with sand, gravel, and cobble substrates;

(D) Spawning areas with slow to swift flow velocities in shallow water where cobble and rubble and the spaces between them are not filled in by fine dirt or sand; and

(E) Water with dissolved oxygen levels greater than 3.5 cc/l and no or minimal pollutant levels for pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels.

(ii) Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

(iii) Streams that have:

(A) Low gradients of less than approximately 2.5 percent;

(B) Water temperatures in the approximate range of 35 to 86 °F (1.7 to 30.0 °C) (with additional natural daily and seasonal variation);

(C) Pool, riffle, run, and backwater components; and

(D) An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies.

(iv) Habitat devoid of nonnative aquatic species or habitat in which nonnative aquatic species are at levels that allow persistence of loach minnow.

(v) Areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(3) Each stream segment includes a lateral component that consists of 300 feet (91.4 meters) on either side of the stream channel measured from the stream edge at bank full discharge. This lateral component of critical habitat contains and contributes to the physical and biological features essential to the loach minnow and is intended as a surrogate for the 100-year floodplain.

(4) Critical habitat map areas. Data layers defining map areas, and mapping of critical habitat areas, was done using Arc GIS and verifying with USGS 7.5′ quadrangles. Legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). All mileage calculations were performed using GIS.

(5) **Note:** Index map of critical habitat units for loach minnow (Map 1) follows:

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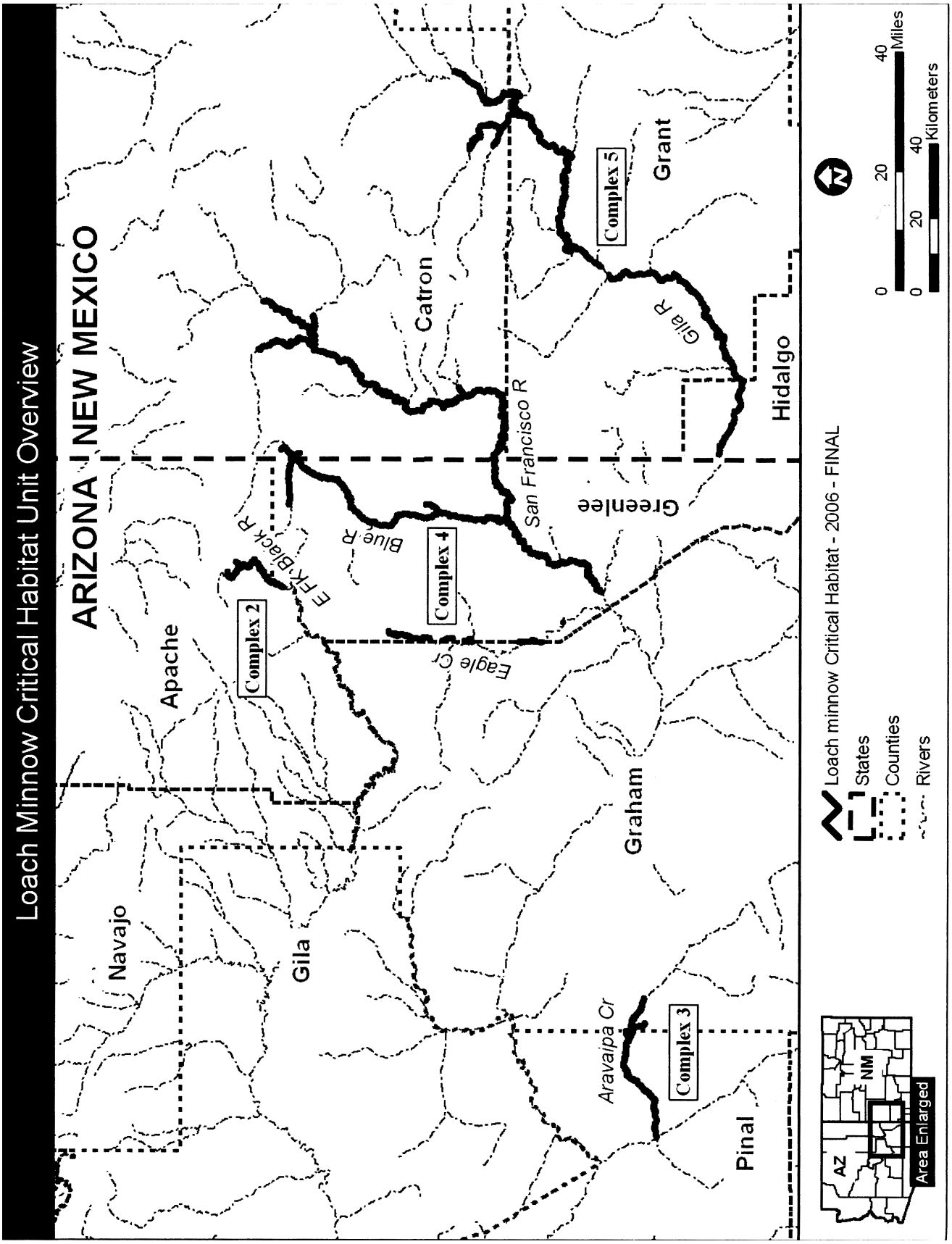


(6) Complex 2—Black River, Apache and Greenlee Counties, Arizona.

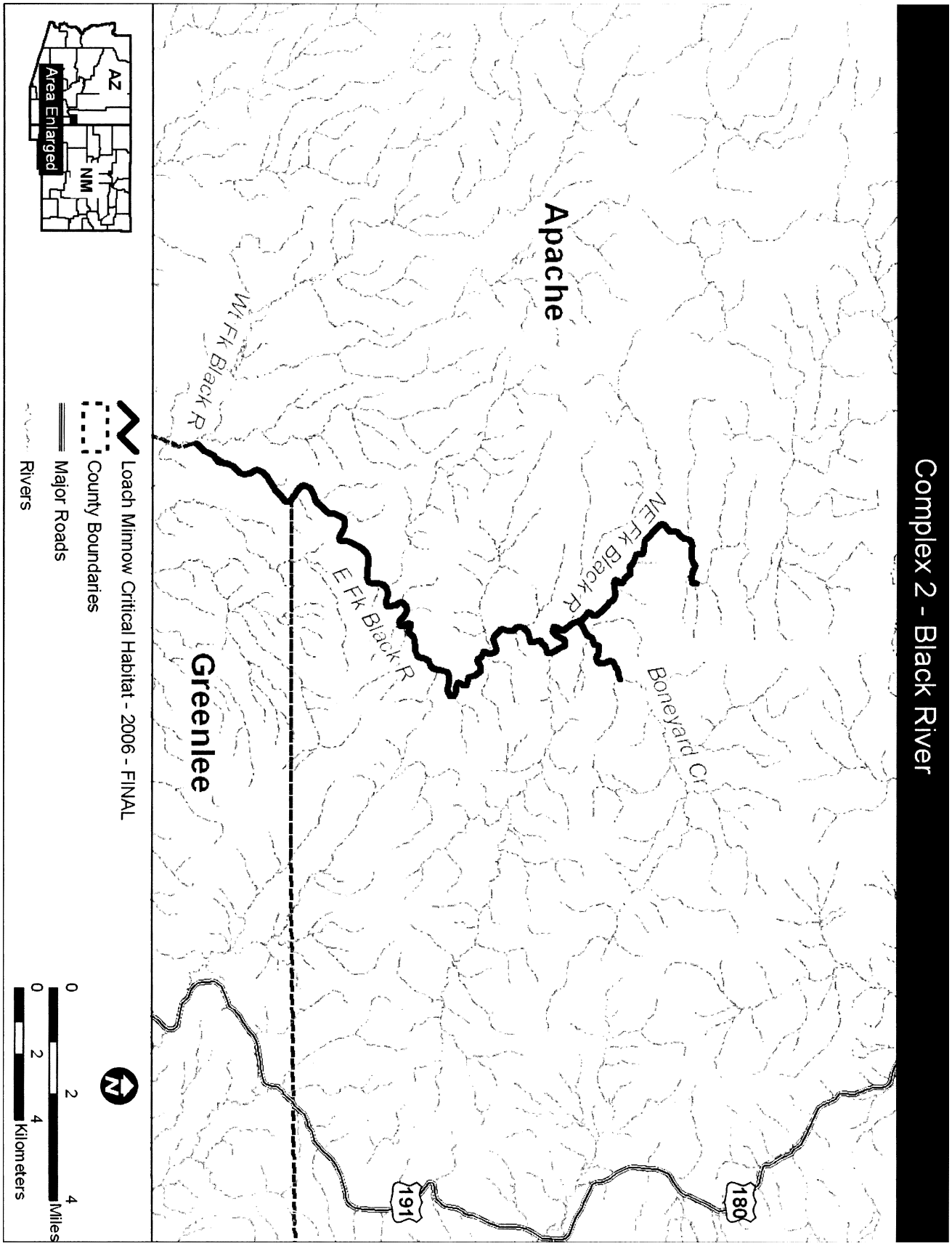
(i) East Fork Black River—12.2 mi (19.7 km) of river extending from the confluence with the West Fork Black River at Township 4 North, Range 28

East, section 11 upstream to the confluence with unnamed tributary approximately 0.51 mi (0.82 km) downstream of the Boneyard Creek confluence at Township 5 North, Range 29 East, section 5. Land ownership: U.S. Forest Service (Apache—Sitgreaves National Forest).

(ii) North Fork East Fork Black River—4.4 mi (7.1 km) of river extending from the confluence with East Fork Black River at Township 5 North, Range 29 East, section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, section 30. Land ownership: U.S. Forest Service (Apache—Sitgreaves National Forest).

(iii) Boneyard Creek—1.4 mi (2.3 km) of creek extending from the confluence with the East Fork Black River at Township 5 North, Range 29 East, section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, section 32. Land ownership: U.S. Forest Service (Apache—Sitgreaves National Forest).

(iv) **Note:** Map of Complex 2 (Black River) of loach minnow critical habitat (Map 2) follows:


Complex 2 - Black River
Apache
Greenlee
W Fk Black R
E Fk Black R
NF Fk Black R
Boneyard Cr
191
180
AZ
NM
Area Enlarged
Loach Minnow Critical Habitat - 2006 - FINAL
County Boundaries
Major Roads
Rivers
N
0 2 4 Miles
0 2 4 Kilometers

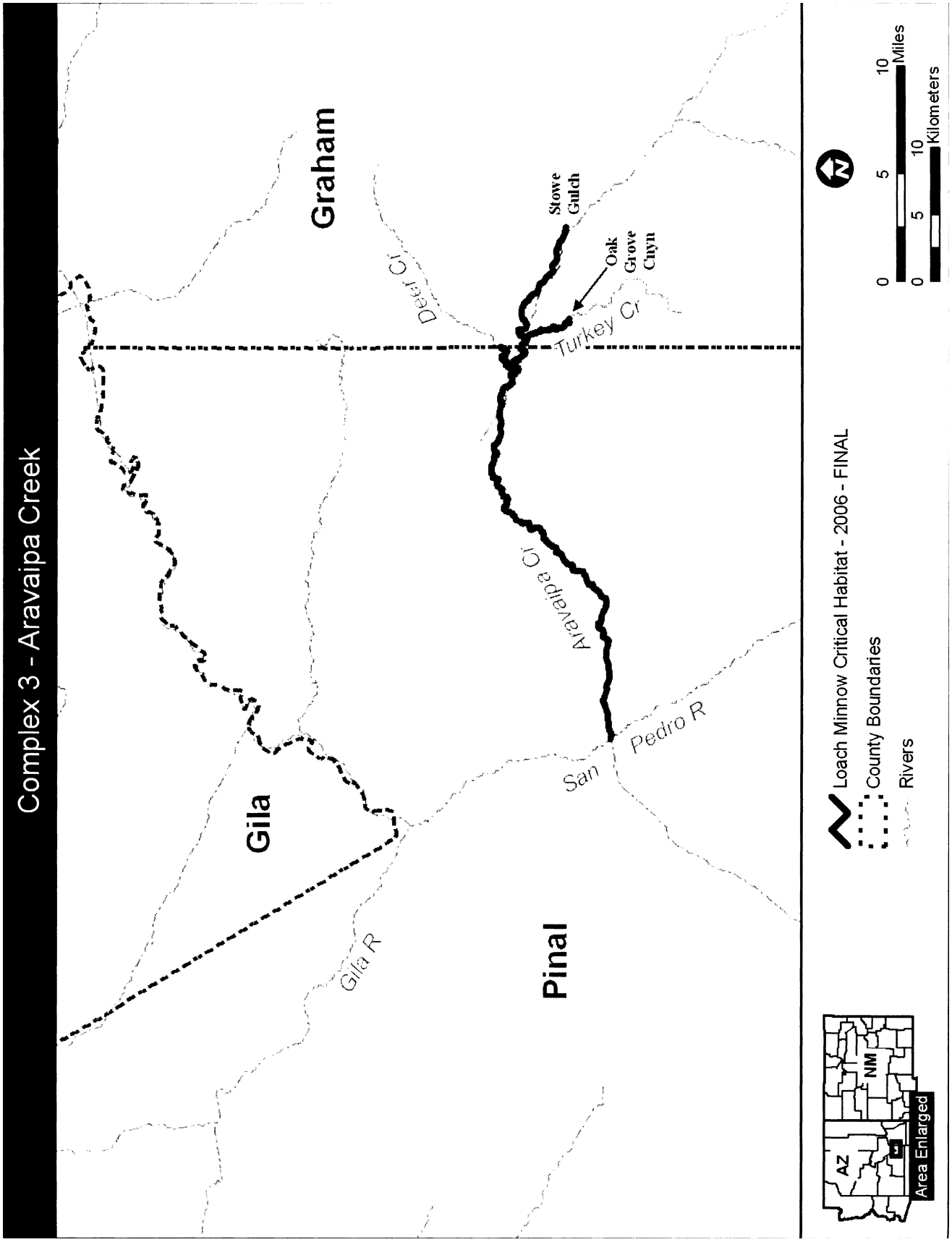
(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham Counties, Arizona.

(i) Aravaipa Creek—28.1 mi (45.3 km) of creek extending from the confluence with the San Pedro River at Township 7 South, Range 16 East, section 9 upstream to the confluence with Stowe Gulch at Township 6 South, Range 19 East, section 35. Land ownership: Bureau of Land Management, Tribal, and State lands.

(ii) Turkey Creek—2.7 mi (4.3 km) of creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 19 East, section 19 upstream to the confluence with Oak Grove Canyon at Township 6 South, Range 19 East, section 32. Land ownership: Bureau of Land Management.

(iii) Deer Creek—2.3 mi (3.6 km) of creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 18 East, section 14 upstream to the boundary of the Aravaipa Wilderness at Township 6 South, Range 19 East, section 18. Land ownership: Bureau of Land Management.

(iv) **Note:** Map of Complex 3 (Aravaipa Creek) of loach minnow critical habitat (Map 3) follows:


Complex 3 - Aravaipa Creek
Graham
Gila
Pinal
Stowe Gulch
Oak Grove Cnyn
Dead Cr
Turkey Cr
Aravaipa Cr
San Pedro R
Gila R
Loach Minnow Critical Habitat - 2006 - FINAL
County Boundaries
Rivers
0 5 10 Miles
0 5 10 Kilometers
AZ
NM
Area Enlarged

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham Counties, Arizona, and Catron County, New Mexico.

(i) Eagle Creek—17.7 mi (28.5 km) of creek extending from the Phelps—Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong and East Eagle Creeks at Township 2 North, Range 28 East, section 29, excluding portions of the San Carlos Reservation. Land ownership: U.S. Forest Service (Apache—Sitgreaves National Forest), and private lands.

(ii) San Francisco River—126.5 mi (203.5 km) of river extending from the confluence with the Gila River at Township 5 South, Range 29 East, section 21 upstream to the mouth of The Box, a canyon above the town of Reserve, at Township 6 South, Range 19 West, section 2. Land ownership: Bureau of Land Management, U.S. Forest Service (Apache–Sitgreaves National Forest), State, and private lands in Arizona, and U.S. Forest Service (Gila National Forest) and private lands in New Mexico.

(iii) Tularosa River—18.6 mi (30.0 km) of river extending from the confluence with the San Francisco River at Township 7 South, Range 19 West, section 23 upstream to the town of Cruzville at Township 6 South, Range 18 West, section 12. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) Negrito Creek—4.2 mi (6.8 km) of creek extending from the confluence with the Tularosa River at Township 7 South, Range 18 West, section 19 upstream to the confluence with Cerco Canyon at Township 7 South, Range 18 West, section 21. Land ownership: U.S. Forest Service (Gila National Forest), and private lands.

(v) Whitewater Creek—1.1 mi (1.8 km) of creek extending from the confluence with the San Francisco River at Township 11 South, Range 20 West, section 27 upstream to the confluence with the Little Whitewater Creek at Township 11 South, Range 20 West, section 23. Land ownership: private lands.

(vi) Blue River—51.1 mi (82.2 km) of river extending from the confluence with the San Francisco River at Township 2 South, Range 31 East, section 31 upstream to the confluence of Campbell Blue and Dry Blue Creeks at Township 6 South, Range 20 West, section 6. Land ownership: U.S. Forest Service (Apache–Sitgreaves National Forest) and private lands in Arizona; U.S. Forest Service (Gila National Forest) in New Mexico.

(vii) Campbell Blue Creek—8.1 mi (13.1 km) of creek extending from the confluence of Dry Blue and Campbell Blue Creeks at Township 6 South, Range 20 West, section 6 in New Mexico upstream to the confluence with Coleman Canyon at Township 4 North, Range 31 East, section 32 in Arizona. Land ownership: U.S. Forest Service (Apache–Sitgreaves National Forest) and private lands in Arizona; U.S. Forest Service (Gila National Forest) in New Mexico.

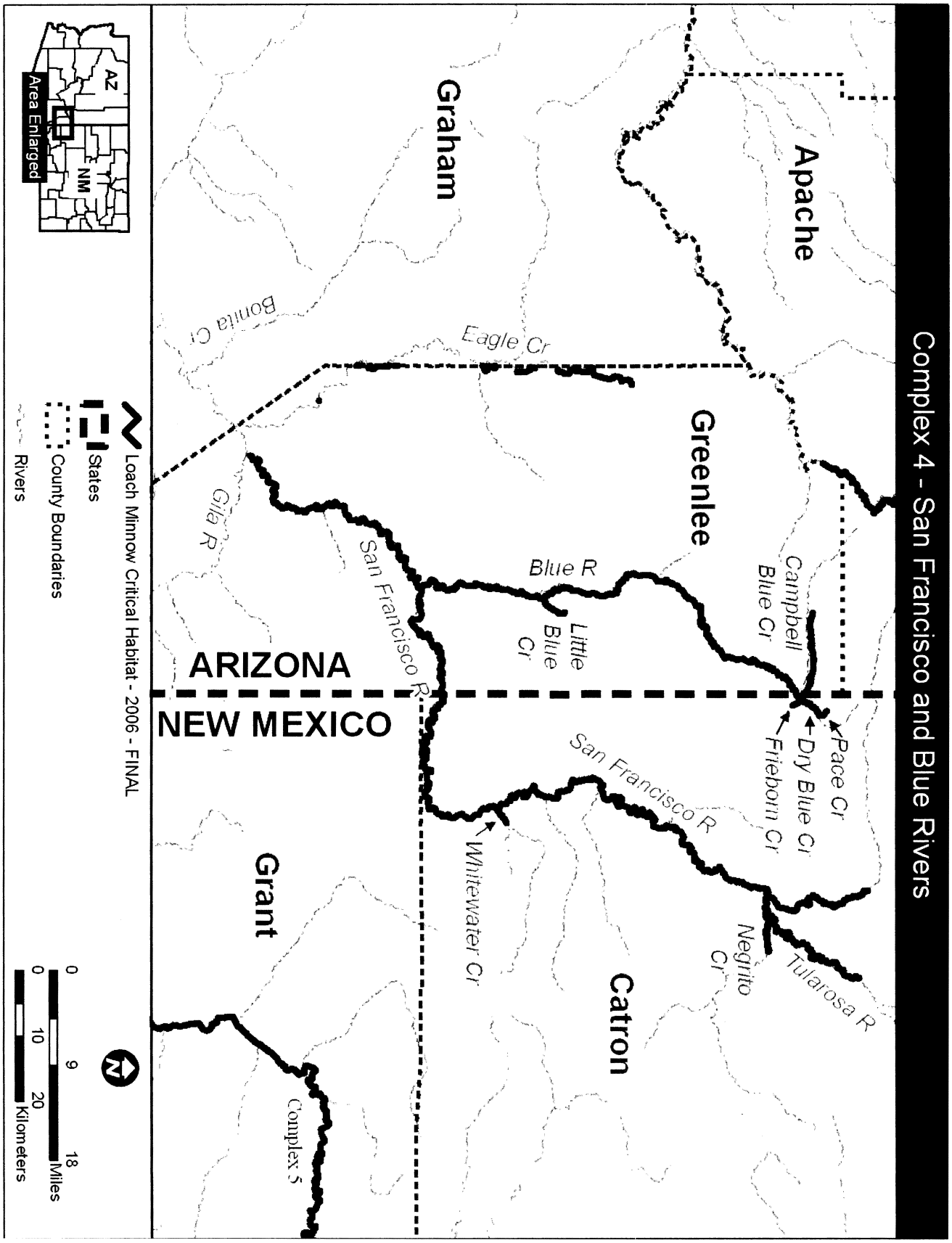
(viii) Dry Blue Creek—3.0 mile (4.8 km) of creek extending from the confluence with Campbell Blue Creek at Township 7 South, Range 21 West, section 6 upstream to the confluence with Pace Creek at Township 6 South, Range 21 West, section 28. Land ownership: U.S. Forest Service (Gila National Forest).

(ix) Pace Creek—0.8 mile (1.2 km) of creek extending from the confluence with Dry Blue Creek at Township 6 South, Range 21 West, section 28 upstream to a barrier falls at Township 6 South, Range 21 West, section 29. Land ownership: U.S. Forest Service (Gila National Forest).

(x) Frieborn Creek—1.1 mi (1.8 km) of creek extending from the confluence with Dry Blue Creek at Township 7 South, Range 21 West, section 6 upstream to an unnamed tributary at Township 7 South, range 21 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest).

(xi) Little Blue Creek—2.8 mi (4.5 km) of creek extending from the confluence with the Blue River at Township 1 South, range 31 East, section 5 upstream to the mouth of a canyon at Township 1 North, Range 31 East, section 29. Land ownership: U.S. Forest Service (Apache–Sitgreaves National Forest).

(xii) **Note:** Map of Complex 4 (San Francisco and Blue Rivers) of loach minnow critical habitat (Map 4) follows:


Complex 4 - San Francisco and Blue Rivers
Apache
Graham
Greenlee
Catron
Grant
ARIZONA
NEW MEXICO
Bonita Cr
Eagle Cr
Gila R
San Francisco R
Blue R
Little Blue Cr
Campbell Blue Cr
Pace Cr
Dry Blue Cr
Frieborn Cr
San Francisco R
Whitewater Cr
Negrito Cr
Tularosa R
Complex 5
Area Enlarged
AZ
NM
Loach Minnow Critical Habitat - 2006 - FINAL
States
County Boundaries
Rivers
0 9 18 Miles
0 10 20 Kilometers
N

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo Counties, New Mexico.

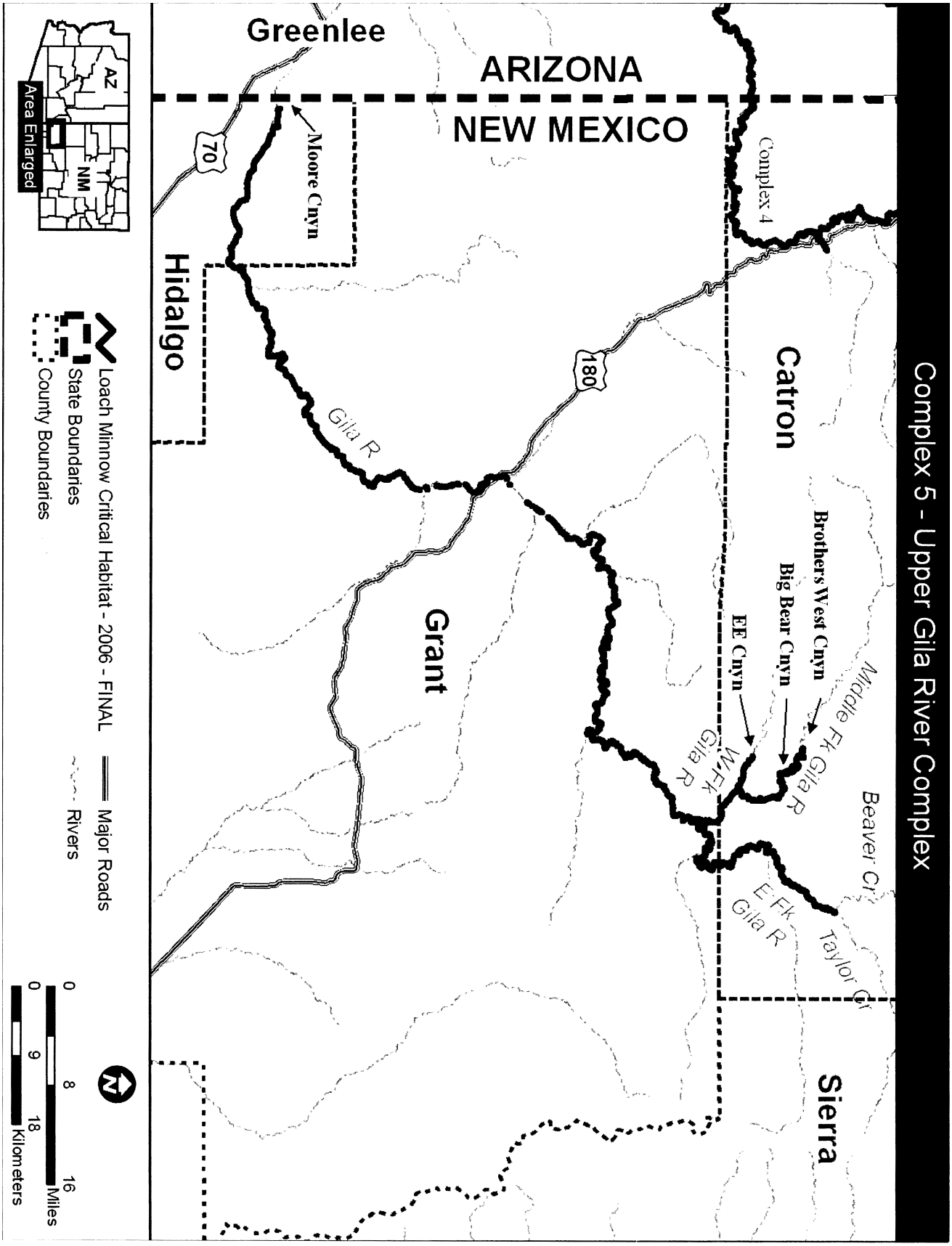
(i) Upper Gila River—94.9 mi (152.7 km) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) at Township 18 South, Range 21 West, section 32 upstream to the confluence of the East and West Forks of the Gila River at Township 13 South, Range 13 West, section 8. Land ownership: Bureau of Land Management, U.S. Forest Service (Gila National Forest), State, and private lands.

(ii) East Fork Gila River—26.1 mi (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 11 South, Range 12 West, section 17 upstream to the confluence of Beaver and Taylor creeks at Township 13 South, Range 13 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—11.9 mi (19.1 km) of river extending from the confluence with the West Fork Gila River at Township 12 South, Range 14 West, section 25 upstream to the confluence with Brothers West Canyon at Township 11 South, Range 14 West, section 33. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) West Fork Gila River—7.7 mi (12.4 km) of river extending from the confluence with the East Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence with EE Canyon at Township 12 South, Range 14 West, section 22. Land ownership: U.S. Forest Service (Gila National Forest), National Park Service, and private lands.

(v) **Note:** Map of Complex 5 (Upper Gila River Complex) of loach minnow critical habitat (Map 5) follows:


Complex 5 - Upper Gila River Complex
ARIZONA
NEW MEXICO
Greenlee
Hidalgo
Catron
Grant
Sierra
Moore Cnyn
Complex 4
Brothers West Cnyn
Big Bear Cnyn
EE Cnyn
Middle Fk Gila R
W Fk Gila R
E Fk Gila R
Beaver Cr
Taylor Cr
Gila R
70
180
Area Enlarged
AZ
NM
Loach Minnow Critical Habitat - 2006 - FINAL
State Boundaries
County Boundaries
Major Roads
Rivers
0 8 16 Miles
0 9 18 Kilometers

* * * * *

Spikedace (Meda fulgida)

(1) Critical habitat units are depicted for Graham, Greenlee, Pinal, and Yavapai Counties, Arizona; and Catron, Grant, and Hidalgo Counties, New Mexico, on the maps and as described below.

(2) Within these areas, the primary constituent elements of critical habitat for spikedace are the following:

(i) Permanent, flowing water with no or minimal pollutant levels, including:

(A) Living areas for adult spikedace with slow to swift flow velocities between 20 and 60 cm/second (8 and 24 in/second) in shallow water between approximately 10 cm (4 in) and 1 meter (40 in) in depth, with shear zones where rapid flow borders slower flow, areas of sheet flow (or smoother, less turbulent flow) at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;

(B) Living areas for juvenile spikedace with slow to moderate water velocities of approximately 18 cm/second (8 in/second) or higher in shallow water between approximately 3 cm (1.2 in) and 1 meter (40 in) in depth;

(C) Living areas for larval spikedace with slow to moderate flow velocities of approximately 10 cm/second (4 in/second) or higher in shallow water approximately 3 cm (1.2 in) to 1 meter (40 in) in depth; and

(D) Water with dissolved oxygen levels greater than 3.5 cc/l and no or minimal pollutant levels for pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels.

(ii) Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

(iii) Streams that have:

(A) Low gradients of less than approximately 1.0 percent;

(B) Water temperatures in the approximate range of 35 to 82 °F (1.7 to 27.8 °C) (with additional natural daily and seasonal variation);

(C) Pool, riffle, run, and backwater components; and

(D) An abundant aquatic insect food base consisting of mayflies, true flies, caddisflies, stoneflies, and dragonflies.

(iv) Habitat devoid of nonnative aquatic species or habitat in which nonnative aquatic species are at levels that allow persistence of spikedace.

(v) Areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(3) Each stream segment includes a lateral component that consists of 300 feet (91.4 meters) on either side of the stream channel measured from the stream edge at bank full discharge. This lateral component of critical habitat contains and contributes to the physical and biological features essential to the spikedace and is intended as a surrogate for the 100-year floodplain.

(4) Critical habitat map areas. Data layers defining map areas, and mapping of critical habitat areas, was done using Arc GIS and verifying with USGS 7.5′ quadrangles. Legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). All mileage calculations were performed using GIS.

(5) **Note:** Index map of critical habitat units for spikedace (Map 1), follows:

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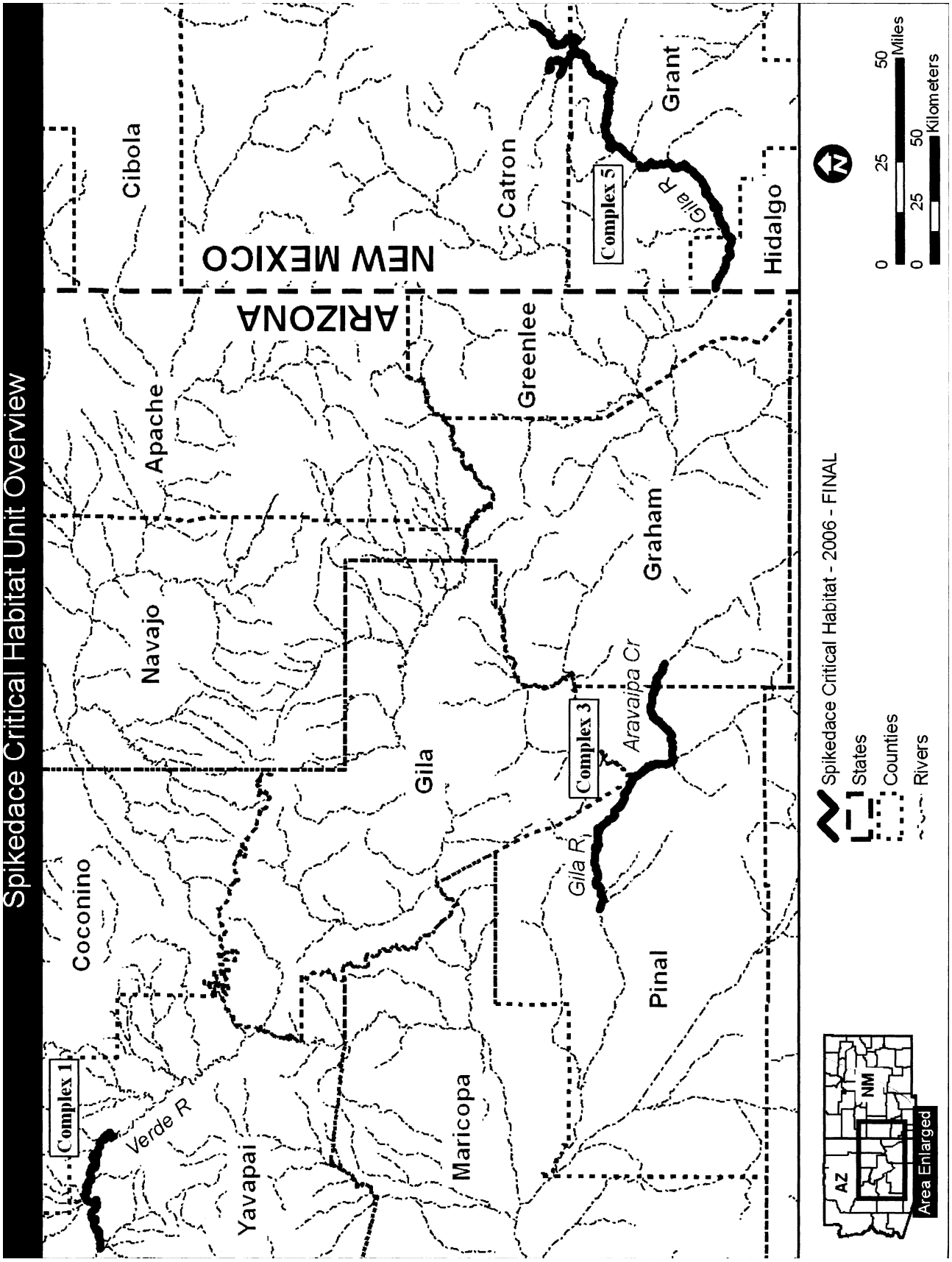
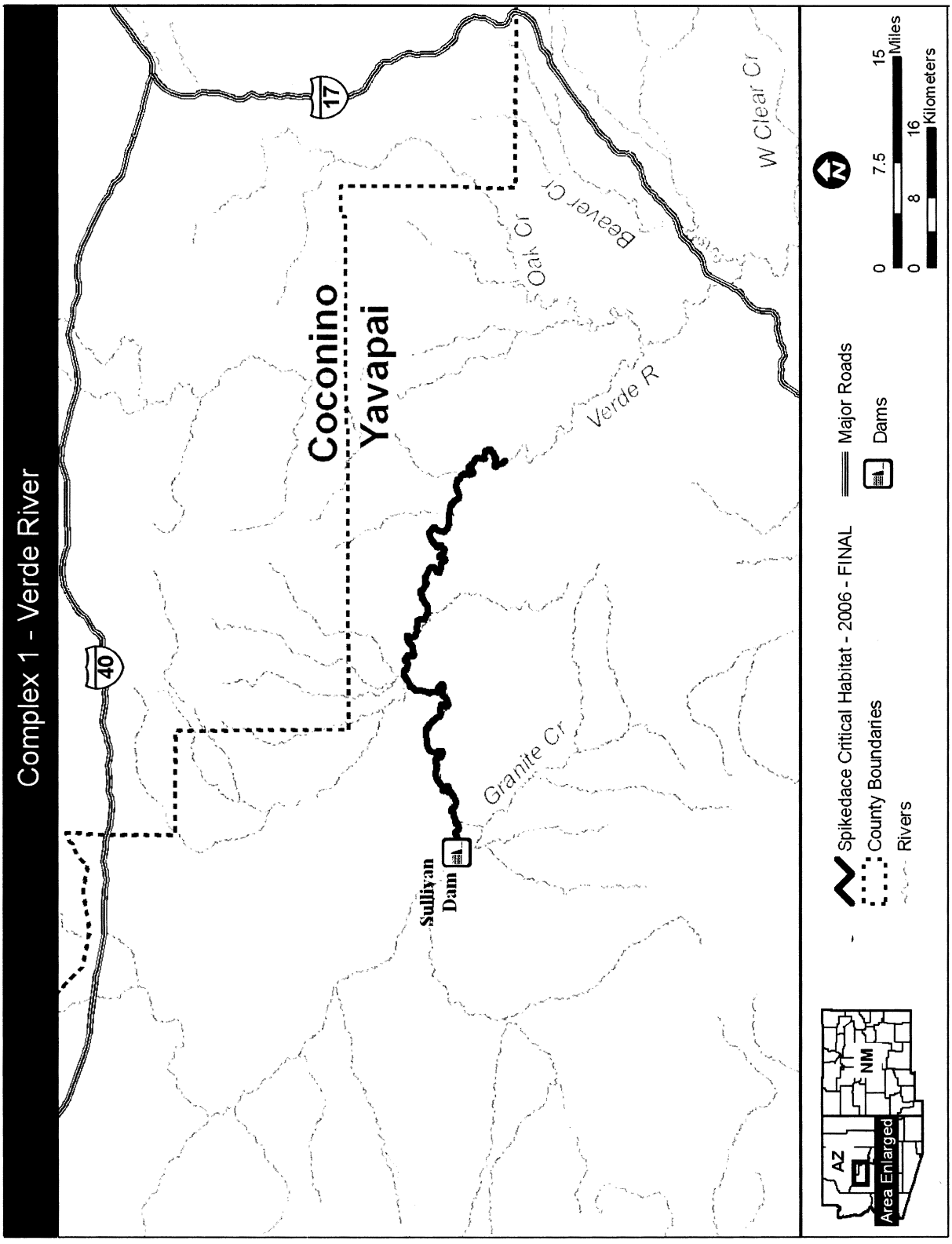


(6) Complex 1—Verde River, Yavapai County, Arizona.

(i) Verde River—43.0 mi (69.2 km) of river extending from the Prescott and Coconino National Forest boundary with private lands at Township 17

North, Range 3 East, section 7, upstream to Sullivan Dam at Township 17 North, Range 2 West, section 15. Land ownership: U.S. Forest Service (Coconino and Prescott National Forests), State, and private lands.

(ii) **Note:** Map of Complex 1 (Verde River) of spikedace critical habitat (Map 2) follows:



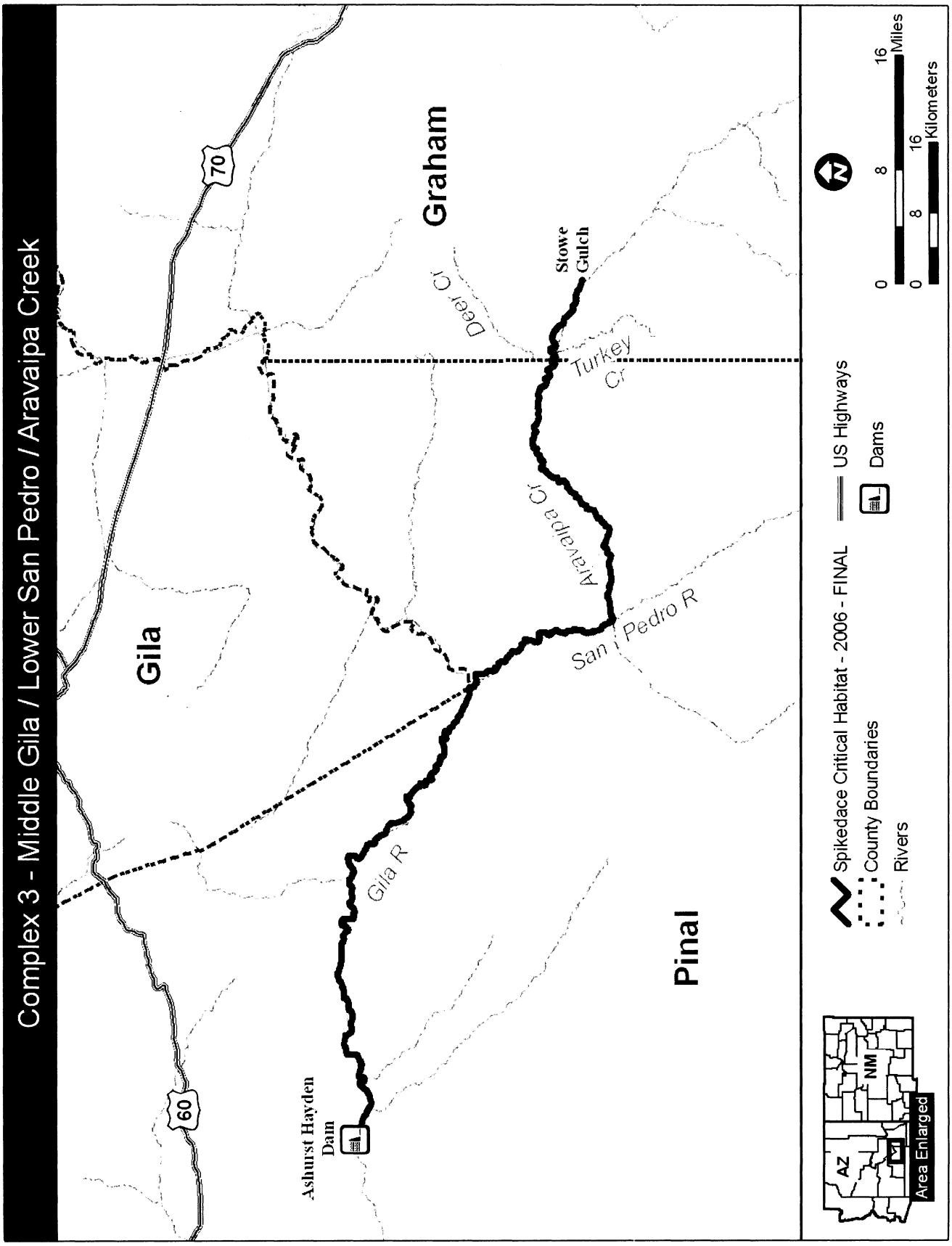
(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham Counties, Arizona.

(i) Gila River—39.0 mi (62.8 km) of river extending from the Ashurst-Hayden Dam at Township 4 South, Range 11 East, section 8 upstream to the confluence with the San Pedro River at Township 5 South, Range 15 East, section 23. Land ownership: Bureau of Reclamation, Bureau of Land Management, State, and private lands.

(ii) Lower San Pedro River—13.4 mi (21.5 km) of river extending from the confluence with the Gila River at Township 5 South, Range 15 East, section 23 upstream to the confluence with Aravaipa Creek at Township 7 South, Range 16 East, section 9. Land ownership: Bureau of Land Management, Tribal, State, and private lands.

(iii) Aravaipa Creek—28.1 mi (45.3 km) of creek extending from the confluence with the San Pedro River at Township 7 South, Range 16 East, section 9 upstream to the confluence with Stowe Gulch at Township 6 South, Range 19 East, section 35. Land ownership: Bureau of Land Management, Tribal, State, and private lands.

(iv) **Note:** Map of Complex 3 (Middle Gila/Lower San Pedro/Aravaipa Creek) of spikedace critical habitat (Map 3) follows:


Complex 3 - Middle Gila / Lower San Pedro / Aravaipa Creek
Gila
Graham
Pinal
70
60
Ashurst Hayden Dam
Gila R
San Pedro R
Aravaipa Cr
Deer Cr
Turkey Cr
Stowe Gulch
Spikedace Critical Habitat - 2006 - FINAL
County Boundaries
Rivers
US Highways
Dams
0 8 16 Miles
0 8 16 Kilometers
AZ
NM
Area Enlarged

(8) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo Counties, New Mexico.

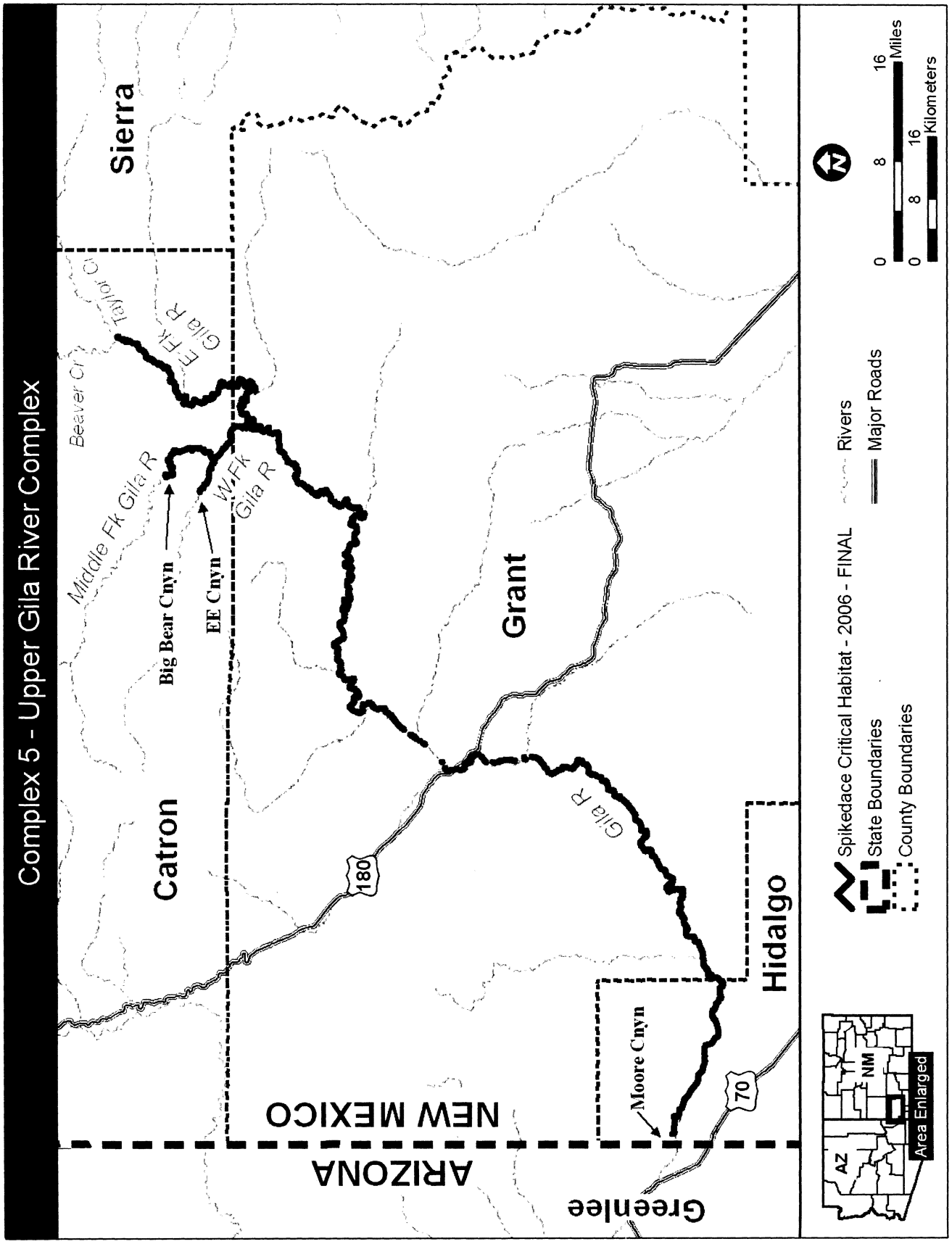
(i) Upper Gila River—94.9 mi (152.7 km) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) at Township 18 South, Range 21 West, section 32 upstream to the confluence of the East and West Forks of the Gila River at Township 13 South, Range 13 West, section 8, excluding lands owned by the Phelps Dodge Corporation. Land ownership: Bureau of Land Management, U.S. Forest Service (Gila National Forest), State, and private lands.

(ii) East Fork Gila River—26.1 mi (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence of Beaver and Taylor creeks at Township 11 South, Range 12 West, section 17. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—7.7 mi (12.3 km) of river extending from the confluence with the West Fork Gila River at Township 12 South, Range 14 West, section 25 upstream to the confluence with Big Bear Canyon at Township 12 South, Range 14 West, section 2. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) West Fork Gila River—7.7 mi (12.4 km) of river extending from the confluence with the East Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence with EE Canyon at Township 12 South, Range 14 West, section 22. Land ownership: U.S. Forest Service (Gila National Forest), National Park Service, and private lands.

(v) **Note:** Map of Complex 5 (Upper Gila River Complex) of spikedace critical habitat (Map 4) follows:


Complex 5 - Upper Gila River Complex
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Catron
Grant
Hidalgo
Greenlee
NEW MEXICO
ARIZONA
Beaver Cr
Taylor Cr
E F Gila R
Middle Fk Gila R
Big Bear Cnyn
EE Cnyn
W Fk Gila R
Gila R
180
70
Moore Cnyn
Spikedace Critical Habitat - 2006 - FINAL
State Boundaries
County Boundaries
Rivers
Major Roads
0 8 16 Miles
0 8 16 Kilometers
AZ
NM
Area Enlarged

* * * * *

Dated: March 6, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–1218 Filed 3–20–07; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 521/P.L. 110–12

To designate the facility of the United States Postal Service located at 2633 11th Street in Rock Island, Illinois, as the "Lane Evans Post Office Building". (Mar. 15, 2007; 121 Stat. 67)

Last List March 9, 2007

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